

Voir Dire

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1
2 MR. KESSLER: Everyone is treated the same.

3 PROSPECTIVE JUROR: Okay, fair, no problem
4 with it.

5 MR. KESSLER: Thank you. I'll ask everyone
6 for this same assurance. If you're suppose
7 chosen as jurors in this case you be fair and
8 impartial, that means to both sides, to the
9 People and to the defense.

10 If I prove to you the defendant's guilt
11 beyond a reasonable doubt can everyone here
12 assure me they will be able to return a verdict
13 of guilty? If I fail to prove the defendant's
14 guilt beyond a reasonable doubt can you return a
15 verdict of not guilty? Everyone assure me of
16 that as well? That's all I ask. Thanks for your
17 time and patience. I'm concluded with the panel.
18 Thank you.

19 THE COURT: Mr. Schechter.

20 MR. SCHECTER: Thank you, your Honor.

21 Good morning. There's no clock in the
22 courtroom.

23 THE COURT: Time stands still here.

24 MR. SCHECTER: Hopefully we will speed along
25 a little bit. Did everyone hear everything I

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2 said yesterday? I know it was tough sitting out
3 there. I'm having a problem here hearing some of
4 your answers. I'll try to speak loudly so
5 hopefully you'll speak loud to me. At times it
6 doesn't happen, especially if you're sitting in
7 the back.

8 Up to now -- what was said yesterday and up
9 to now, anyone have any major problems with the
10 concepts that have been brought before you?
11 Okay. Now, you really haven't had much
12 information. Only thing you know about this is
13 that there was an alleged kidnaping and alleged
14 rape of a witness or how many witnesses. That
15 hasn't been brought out. Does anyone feel
16 because of the type of crimes alone that they
17 can't give my client, Mr. Zheng, a fair trial?

18 Start with you, Miss Arrington. You said
19 originally you can't be fair and impartial
20 because of the type of crime, because of the
21 allegations of rape?

22 PROSPECTIVE JUROR 1: Well, I felt I could be
23 fair but I was questioning myself whether I could
24 be impartial being a woman and in a rape case.

25 MR. SCHECTER: If a woman takes the stand in

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2 this particular matter and she's going to make
3 certain -- she's going to make certain statements
4 and I will have to assume that one of those
5 statements is that Mr. Zheng raped her.

6 Now, I don't know what else is going to be
7 said concerning that, just that -- are you going
8 to feel more sympathetic to that woman and side
9 more with her because you're a woman?

10 PROSPECTIVE JUROR 1: Well, hopefully I would
11 be able to listen to the facts and make a
12 determination on what the evidence was.

13 MR. SCHECTER: Well, unfortunately, in a
14 Court of Law where my client is accused of a
15 crime hopefully may not be good enough. So can
16 you definitively state that you would not side
17 with her, you would just listen to what she said,
18 make your evaluation based on what she says. Can
19 you give me a definite yes on that?

20 PROSPECTIVE JUROR: Yes.

21 MR. SCHECTER: And if my client does not
22 testify would you hold that against him?

23 PROSPECTIVE JUROR 1: No.

24 MR. SCHECTER: You don't feel you have to
25 hear both sides?

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1
2 PROSPECTIVE JUROR: No.

3 MR. SCHECTER: You'll listen to the evidence
4 and make your decision based on the evidence or
5 lack of evidence?

6 PROSPECTIVE JUROR: Yes.

7 MR. SCHECTER: If her testimony is not
8 credible and believable because there are certain
9 gaps, or whatever, and there are certain other
10 doubts you have, would you have any problem
11 standing up and saying you have a reasonable
12 doubt?

13 PROSPECTIVE JUROR: No, I would have no
14 problem.

15 MR. SCHECTER: Miss Hanley, excuse me.

16 PROSPECTIVE JUROR 2: Close.

17 MR. SCHECTER: You've been the victim of a
18 crime, some member of your family, I believe you
19 said?

20 PROSPECTIVE JUROR 2: Uh-hum.

21 MR. SCHECTER: Was that you or a member of
22 your family?

23 PROSPECTIVE JUROR 2: They weren't actually
24 to a person, there were several car thefts,
25 breaking into garages, that type of thing.

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2 MR. SCHECTER: Anything happen in any of
3 those incidents that would make you feel that you
4 could not give my client a fair trial?

5 PROSPECTIVE JUROR 2: No, not with any of
6 those incidents. No.

7 MR. SCHECTER: Now, you said that -- now, the
8 Judge will instruct you I don't have any burden
9 whatsoever. The People must prove him guilty
10 beyond a reasonable doubt of each crime, each
11 element of each crime. In fact, if there are
12 twenty elements of one crime and you believe that
13 the People have proven him guilty of 19 of those
14 twenty elements, but one of those elements you
15 have a reasonable doubt, your verdict as to that
16 count must be not guilty; do you realize that?

17 PROSPECTIVE JUROR 2: Uh-hum.

18 MR. SCHECTER: Now -- and that's why the
19 verdict is not guilty, or innocent. It's guilty
20 or not guilty. So, we don't have any burden. I
21 would have to prove someone innocent, but that's
22 not my burden. Here they have to prove him
23 guilty. Now, you said -- and under our law
24 Mr. Zheng doesn't have any obligation to take the
25 witness stand or call any witnesses.

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2 PROSPECTIVE JUROR 2: I know that.

3 MR. SCHECTER: And -- but you did say that
4 there would be some unfinished business, I
5 believe, was your wording?

6 PROSPECTIVE JUROR: Just having a curious
7 nature.

8 THE COURT: There's a lot of curious people.

9 MR. SCHECTER: If he does not take the
10 witness stand will you hold it against him?

11 PROSPECTIVE JUROR 2: No.

12 MR. SCHECTER: If we don't call any witnesses
13 are you going to hold it against him?

14 PROSPECTIVE JUROR 2: No.

15 MR. SCHECTER: And you're going to base your
16 decision on what you hear or what you don't hear
17 here?

18 PROSPECTIVE JUROR 2: Correct.

19 MR. SCHECTER: You can give him a fair and
20 impartial jury even if we don't call any
21 witnesses?

22 PROSPECTIVE JUROR 2: I believe so.

23 MR. SCHECTER: And the type crime of rape,
24 you would not make -- you wouldn't side with the
25 woman or would you?

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2 PROSPECTIVE JUROR 2: It bothers me.

3 MR. SCHECTER: Well?

4 PROSPECTIVE JUROR 2: I mean, I'm sure it
5 would bother most any woman.

6 MR. SCHECTER: If she comes in here and
7 testifies about something, are you going to say,
8 I'm going to cut her more slack because of the
9 type of crime?

10 PROSPECTIVE JUROR: I hope not. I hope I'm
11 more reasonable than that. It's hard to say.

12 MR. SCHECTER: I agree with you but,
13 unfortunately, in the criminal justice system
14 hope is not good enough. You have to be able to
15 tell me definitively you will not cut her anymore
16 slack, you'll listen to her like anyone else; can
17 you do that?

18 PROSPECTIVE JUROR 2: I guess I can, yeah.

19 MR. SCHECTER: Thank you.

20 PROSPECTIVE JUROR: Welcome.

21 MR. SCHECTER: Miss Dimisa, do you think my
22 client should have any burden to prove anything?

23 PROSPECTIVE JUROR 3: No.

24 MR. SCHECTER: Doesn't have to call any
25 witness. You have friends who are police

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2 officers in law enforcement?

3 PROSPECTIVE JUROR 3: Yes.

4 MR. SCHECTER: Who are they?

5 PROSPECTIVE JUROR 3: Mother's current
6 boyfriend is a retired detective.

7 MR. SCHECTER: Is that the only one?

8 PROSPECTIVE JUROR 3: Yes.

9 MR. SCHECTER: Has he ever discussed with you
10 his work?

11 PROSPECTIVE JUROR: Yes.

12 MR. SCHECTER: Has he made his feelings known
13 about the criminal justice system?

14 PROSPECTIVE JUROR 3: No. That's where my
15 father comes in. My father is a criminal
16 attorney.

17 MR. SCHECTER: Okay. Based on those two
18 things, whatever your father told you and
19 whatever your mother's boyfriend has told you,
20 can you put everything aside and listen to the
21 facts based on what you hear here?

22 PROSPECTIVE JUROR 3: I think for the most
23 part I can. I know it's not a definite answer.
24 I had a lot of background in it.

25 MR. SCHECTER: I don't know what your father

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2 had told you or your mother's boyfriend told you.
3 You won't speak to -- if selected as a juror you
4 are not going to go speak to them and even if
5 you're selected -- if you go out on Sunday with
6 your father he'll ask what have you been doing
7 the last week sitting on a criminal trial. He'll
8 ask you what it's about. You'll tell him I can't
9 tell you; is that correct?

10 PROSPECTIVE JUROR: Yes.

11 MR. SCHECTER: Where does he practice?

12 PROSPECTIVE JUROR 3: He has practiced in
13 this area. I'm -- he's retired right now. He
14 just recently stopped.

15 MR. SCHECTER: Okay. And when you say you'd
16 be fair and impartial you gave an equivocal, yes,
17 I believe.

18 PROSPECTIVE JUROR: Yeah, because one of my
19 friends was raped.

20 MR. SCHECTER: Someone takes the witness
21 stand and says she was raped, will you side more
22 with her because what happened to your friend?

23 PROSPECTIVE JUROR: I can't give a definite
24 answer because I think I might.

25 MR. SCHECTER: Thank you. Miss Delamata,

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1
2 you're told I don't have any burden. The
3 indictment is only an accusation, but you say if
4 Mr. Zheng is here he must have done something,
5 right?

6 PROSPECTIVE JUROR 4: Yes.

7 MR. SCHECTER: So, do you feel you would side
8 more with the prosecution based on him being
9 accused of a crime?

10 PROSPECTIVE JUROR 4: No.

11 MR. SCHECTER: Let me ask you something:
12 Knowing what you're feeling, do you think you'd
13 be fair and impartial?

14 PROSPECTIVE JUROR 4: Yes.

15 MR. HAGGERTY: Even though you feel he must
16 have done something or something must have
17 happened?

18 PROSPECTIVE JUROR: Yes.

19 MR. SCHECTER: Do you believe the police can
20 arrest the wrong person?

21 PROSPECTIVE JUROR: Sometimes you hear in the
22 news and things are wrong.

23 MR. SCHECTER: What's your feeling? You know
24 in a baseball game you have three strikes against
25 you, right? Now, as my client is sitting as a

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defendant in a case, does he have one strike
against him at this time?

PROSPECTIVE JUROR: I don't know nothing
about baseball.

MR. SCHECTER: Do you know anything about any
sport?

PROSPECTIVE JUROR: Basketball.

MR. SCHECTER: Okay. Normally when the game
begins the score is zero?

PROSPECTIVE JUROR: Yes.

MR. SCHECTER: Because my client is accused
of a crime do you think that the District
Attorney's office has a little edge at this time?

PROSPECTIVE JUROR 4: Yes.

MR. SCHECTER: Yes?

PROSPECTIVE JUROR 4: Yes.

MR. SCHECTER: Thank you.

Miss Serrano, you have members who are
attorneys and in law enforcement?

PROSPECTIVE JUROR 5: My father is a retired
New York City police officer and my brother is a
correction officer.

MR. SCHECTER: Have they ever discussed their
work with you?

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1 PROSPECTIVE JUROR 5: Yes.

2 MR. SCHECTER: Thank you. Mr. Lynch -- Miss
3 Teng, you said you have problem with the English
4 language?
5

6 PROSPECTIVE JUROR 6: Yes.

7 MR. SCHECTER: Mr. Lynch, you say you have to
8 hear both sides of the story? Ideally you do.
9 But in our criminal justice system you don't or
10 you may not. If my client doesn't take the
11 witness stand will you hold that against him?

12 PROSPECTIVE JUROR 7: No.

13 MR. SCHECTER: If we don't call any witness
14 you won't hold it against him, will you?

15 PROSPECTIVE JUROR 7: No.

16 MR. SCHECTER: You'll listen to the evidence,
17 make a decision based on what you hear and what
18 you don't hear?

19 PROSPECTIVE JUROR 7: What I do hear.

20 MR. SCHECTER: And if something is missing
21 from that testimony then would you have any
22 problem standing up and saying not guilty?

23 PROSPECTIVE JUROR 7: Possible.

24 MR. SCHECTER: In other words, if -- if you
25 don't believe the District Attorney has proven my

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2 client guilty beyond a reasonable doubt would you
3 have any problem standing up and saying not
4 guilty?

5 PROSPECTIVE JUROR 7: Yes.

6 MR. SCHECTER: You would have a problem with
7 that?

8 PROSPECTIVE JUROR 7: No problem -- I mean, I
9 have difficulty thinking he's not guilty.

10 MR. SCHECTER: If the People failed to prove
11 him guilty beyond a reasonable doubt, would you
12 have any problem about standing up and saying not
13 guilty?

14 PROSPECTIVE JUROR 7: No.

15 MR. SCHECTER: Thank you. Miss Dookwah?

16 PROSPECTIVE JUROR 10: Yes?

17 MR. SCHECTER: Your husband is a security
18 officer?

19 PROSPECTIVE JUROR: Yes.

20 MR. SCHECTER: Who does he work for?

21 PROSPECTIVE JUROR: Chrysler Building.

22 MR. HAGGERTY: Has he ever arrested anyone?

23 PROSPECTIVE JUROR 10: No.

24 MR. SCHECTER: Has he ever been in law
25 enforcement?

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1 PROSPECTIVE JUROR: No.

2 MR. SCHECTER: You said you know judges or
3 attorneys?
4

5 PROSPECTIVE JUROR 10: Yes.

6 MR. SCHECTER: You are not going to speak to
7 them?

8 PROSPECTIVE JUROR: No.

9 MR. SCHECTER: Any reason why you can't be
10 fair and impartial?

11 PROSPECTIVE JUROR: No.

12 MR. SCHECTER: If my client doesn't take the
13 witness stand or call any witnesses will you hold
14 that against him?

15 PROSPECTIVE JUROR 10: No.

16 MR. SCHECTER: The type of crime we are
17 dealing with, that won't effect you?

18 PROSPECTIVE JUROR 10: No.

19 MR. SCHECTER: In the context of everything?

20 PROSPECTIVE JUROR 10: No.

21 MR. SCHECTER: If you don't believe the
22 People have sustained their burden any problem
23 standing up and saying not guilty?

24 PROSPECTIVE JUROR 10: No.

25 MR. SCHECTER: Miss Sherman who's in law

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enforcement?

PROSPECTIVE JUROR 11: My brother-in-law's brother is a cop.

MR. SCHECTER: Normally brother-in-law's brother normally you don't see them that often?

PROSPECTIVE JUROR: Two or three times a year.

MR. SCHECTER: He hasn't discussed his work with you?

PROSPECTIVE JUROR: Sometimes.

MR. HAGGERTY: That won't affect you one way or the other?

PROSPECTIVE JUROR 11: No.

MR. SCHECTER: Thank you. Who's the attorneys?

PROSPECTIVE JUROR: I have a sister-in-law and my husband's friend. None with criminal.

MR. SCHECTER: That won't affect you?

PROSPECTIVE JUROR 11: No.

MR. SCHECTER: Any of the concepts I said up to now going to make you feel you can't give my client a fair trial?

PROSPECTIVE JUROR 11: No.

MR. SCHECTER: You have been the victim of a

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crime?

PROSPECTIVE JUROR 11: My mother has.

MR. SCHECTER: What type of crime?

PROSPECTIVE JUROR 11: The place she was working at, she was leaving work, she was taking as hostage at gunpoint until she gave over the money.

MR. SCHECTER: This is a kidnaping case. Will this affect you?

PROSPECTIVE JUROR 11: It shouldn't.

MR. SCHECTER: How long ago was that?

PROSPECTIVE JUROR 11: Fifteen years ago.

MR. SCHECTER: You won't hold it against my client?

PROSPECTIVE JUROR 11: No.

MR. SCHECTER: You have to tell me it won't affect you?

PROSPECTIVE JUROR 11: No.

MR. SCHECTER: Thank you. Miss Diazvilla?

PROSPECTIVE JUROR 12: Yes?

MR. SCHECTER: I'm sorry. When you were questioned originally you said you couldn't be fair and impartial; am I correct?

PROSPECTIVE JUROR 12: Yes.

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1
2 MR. SCHECTER: Because of the type of crime?

3 PROSPECTIVE JUROR 12: Yeah.

4 MR. SCHECTER: Miss Harris, you're a 9-1-1
5 operator?

6 PROSPECTIVE JUROR 13: Yes.

7 MR. SCHECTER: You're the one who gets the
8 calls and dispatches them to the local police?

9 PROSPECTIVE JUROR 13: To the radio dispatch.

10 MR. SCHECTER: Your the one who gets the
11 original call?

12 PROSPECTIVE JUROR 13: Yes.

13 MR. SCHECTER: You're a civilian worker with
14 the police department?

15 PROSPECTIVE JUROR 13: Yes.

16 MR. SCHECTER: Anything in that job why you
17 couldn't be fair?

18 PROSPECTIVE JUROR 13: I have no problem.

19 MR. SCHECTER: You did say you have to hear
20 both sides?

21 PROSPECTIVE JUROR 13: Yes, I have to hear
22 both sides in the evidence.

23 MR. SCHECTER: If my client doesn't take the
24 witness stand, he doesn't have any burden to,
25 will you then not give him a fair trial?

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1
2 PROSPECTIVE JUROR: I have no problem with
3 that.

4 MR. SCHECTER: But you're not going to
5 hear --

6 PROSPECTIVE JUROR: If I just hear one side?

7 MR. SCHECTER: Yes.

8 PROSPECTIVE JUROR: With the evidence?

9 MR. SCHECTER: Yes.

10 PROSPECTIVE JUROR: I have to go by that, one
11 side and the evidence.

12 MR. SCHECTER: Just because I don't call any
13 witnesses or my client doesn't take the stand at
14 this moment, I don't know, will you say since he
15 didn't take the stand, I'm going to find him
16 guilty?

17 PROSPECTIVE JUROR: No. I'm going to have to
18 hear the evidence from the other party.

19 MR. SCHECTER: Whatever evidence there is.
20 If that evidence is sufficient, if there are
21 holes or inconsistencies or if you have a
22 reasonable doubt, you have no problem standing up
23 and saying not guilty if we don't call any
24 witness?

25 PROSPECTIVE JUROR 13: I have no doubt if I

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1
2 get evidence from that one party.

3 MR. SCHECTER: What I'm saying is, if that
4 evidence is not sufficient beyond a reasonable
5 doubt, we don't call any witnesses, would you
6 have any problem about standing up and saying not
7 guilty?

8 PROSPECTIVE JUROR 13: No problem at all.

9 MR. HAGGERTY: Okay. Thank you, Miss Harris.
10 Mr. Wilson, anything you heard up to now makes
11 you feel you want to tell me anything?

12 PROSPECTIVE JUROR 14: No.

13 MR. SCHECTER: Have a problem if I don't ask
14 you any questions?

15 PROSPECTIVE JUROR 14: No.

16 MR. SCHECTER: Mr. Spardel, you were the
17 victim of a crime?

18 PROSPECTIVE JUROR 15: I have.

19 MR. SCHECTER: What type of crime?

20 PROSPECTIVE JUROR: Mugged, car stolen.

21 MR. SCHECTER: Anyone ever apprehended?

22 PROSPECTIVE JUROR 15: No.

23 MR. SCHECTER: Make you feel more siding with
24 the District Attorney's office?

25 PROSPECTIVE JUROR 15: No.

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1
2 MR. SCHECTER: Give my client a fair trial?

3 PROSPECTIVE JUROR 15: I think so.

4 MR. SCHECTER: Anyone here ever testified in
5 Court? Mr. Nealon?

6 PROSPECTIVE JUROR 9: I testified in an
7 assault charge, a close friend of mine.

8 MR. SCHECTER: And, Miss Serrano, what type
9 of case?

10 PROSPECTIVE JUROR 5: Robbery.

11 MR. SCHECTER: Were you robbed?

12 PROSPECTIVE JUROR 5: No, my neighbor was
13 robbed.

14 MR. SCHECTER: Anything about that would make
15 you feel you would side more -- withdrawn.

16 Anyone watch Court T.V.? Anyone have
17 anything you want to tell me that hasn't been
18 brought out yet?

19 PROSPECTIVE JUROR 12: I am the victim of
20 domestic violence and that includes rape.

21 MR. SCHECTER: Thank you. Nothing further.

22 THE COURT: Consult. When your you're both
23 ready step inside. Excuse us for a few moments.

24 (Whereupon, the following takes place in the
25 robing room outside the presence of the defendant

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and the prospective jurors:)

COURT CLERK: Second set of challenges in the case of People versus Zheng Hai, 3282-95. As we have four picked we are looking for eight more. First eight, Arrington through Jassal, J-a-s-s-a-l. Any challenges for cause by the people, one through eight?

MR. KESSLER: Yeah, juror eight. Mr. Jassal indicated he has a religious problem.

THE COURT: I'll allow it.

MR. SCHECTER: No objection.

MR. KESSLER: Juror six, Miss Teng. Under the strange beliefs she saw the defendant in the newspaper on a different case. I'll consent to Miss Teng.

COURT CLERK: Any objections?

MR. SCHECTER: No.

MR. KESSLER: Juror 5. Miss Serrano thinks all lawyers are evil. I'll consent to her.

THE COURT: That's her perception.

MR. SCHECTER: No objection. We don't want her to do anything during this trial.

THE COURT: Okay.

MR. KESSLER: Miss Delamata. She indicated

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2 even though she could be fair she thinks the
3 score is unfair.

4 MR. SCHECTER: No objection.

5 THE COURT: Excused.

6 MR. KESSLER I think that's it.

7 THE COURT: Challenges by the defense?

8 MR. SCHECTER: Number three, Miss Dimisa.
9 She said she couldn't be fair and impartial.

10 THE COURT: All right. Any objection?

11 MR. KESSLER: To me she seemed like a pretty
12 fair person.

13 THE COURT: She might be pretty fair. She
14 did say that, you know.

15 MR. SCHECTER: That's it for the first eight.

16 THE COURT: Perempt by the people, Arrington,
17 Hanley or Lynch?

18 MR. KESSLER: Arrington is fine. Hanley is
19 fine and Mr. Lynch is okay.

20 THE COURT: By defense?

21 MR. SCHECTER: Number two, just Miss Hanley.

22 COURT CLERK: Defense used four perempts at
23 this time.

24 THE COURT: That gives us juror 5, Cheryl
25 Arrinton and juror six, Jerome Lynch. As we have

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1
2 six jurors. The next six, Nealon through Wilson.

3 Cause, people?

4 MR. KESSLER: Jurors 9 and ten, Mr. Nealon
5 and Miss Dookway. Those where the only two
6 people who had a problem convicting solely upon
7 the testimony of one witness, no matter how hard
8 I tried to rehabilitate them.

9 MR. SCHECTER: No objection.

10 THE COURT: Okay.

11 MR. KESSLER: I'm sorry, and Miss Diazvilla.
12 I forgot her. She indicated she couldn't be
13 fair. I think she was a victim of domestic
14 violence.

15 THE COURT: She said she couldn't be a fair
16 juror. She was very vehement.

17 MR. SCHECTER: No objection.

18 THE COURT: She softened up a little bit.

19 Any objection?

20 MR. SCHECTER: No.

21 THE COURT: Anybody else?

22 MR. KESSLER: As nine through fourteen for
23 cause, no.

24 THE COURT: Defense?

25 MR. SCHECTER: No.

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THE COURT: Perempts, people?

3

MR. KESSLER: Mr. Wilson I perempt.

4

THE COURT: People used two perempts.

5

Perempts by defense?

6

MR. SCHECTER: Miss Sherman.

7

COURT CLERK: Defense used five perempts.

8

Karen Harris is juror seven. Last two

9

jurors, Spardel and Hsieh, challenges cause,

10

people?

11

MR. KESSLER: I wrote cause sixteen but I

12

forgot why.

13

MR. SCHECTER: She said she can't be fair to

14

him.

15

THE COURT: Which juror?

16

MR. KESSLER: The last one.

17

MR. SCHECTER: She came up on the side bar.

18

THE COURT: She gave a lot of reasons why.

19

MR. KESSLER: I forgot we had so many for

20

cause.

21

THE COURT: She said she was robbed. She had

22

all that asthma paraphernalia.

23

MR. SCHECTER: Among other things, plus a

24

robbery.

25

THE COURT: She gave us the kicker.

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Any objection by defense?

MR. SCHECTER: No.

THE COURT: Cause at this time for juror
Spardel?

MR. SCHECTER: No.

THE COURT: Perempt, people?

MR. KESSLER: No.

MR. SCHECTER: He's fine.

COURT CLERK: Juror eight will be Christopher
Spardel.

(The following occurs in open court:)

COURT CLERK: Cheryl Arrington, Jerome Lynch,
Karen Harris and Christopher Spardel. If I
called your name remain seated. If I did not
call your name, with the thanks of the Court,
take your belongings and return back to central
jury on the other side.

COURT CLERK: Remaining four jurors
satisfactory to both sides?

MR. KESSLER: Yes.

MR. SCHECTER: Yes, your Honor.

COURT CLERK: Jurors in the box, stand up a
moment.

(Whereupon, four jurors were duly sworn by

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the Clerk of the Court)

COURT CLERK: Sit in the first row.

THE COURT: Fill the box.

COURT CLERK: Certainly. If you hear your name answer here. If I mispronounce your name please correct me.

First seat goes to Linda Fontana,
F-o-n-t-a-n-a, first name, Linda.

THE COURT: Ladies and gentlemen, as you go in the box you'll be handed out a questionnaire. Familiarize yourself with it. When your turn comes you'll be able to answer the questions quickly.

COURT CLERK: Christine Hicks, H-i-c-k-s,
C-h-r-i-s-t-i-n-e, first name. Seat three,
Jacqueline Rebatta, R-e-b-a-t-t-a. Diane Reilly,
R-e-i-l-l-y, first name Dianne. Sophia Lee,
L-e-e, first name is S-o-p-h-i-a. Lisa
Demarinis, D-e-m-a-r-i-n-i-s, first name Lisa,
L-i-s-a. Ruth Kinneary, K-i-n-n-e-a-r-y, first
name Ruth, R-u-t-h. Melvin Bears, B-e-a-r-s,
M-e-l-v-i-n first name. Kim Rego, R-e-g-o.
First name, K-i-m. Clothilde Carter,
A PROSPECTIVE JUROR: It's Clothilde.

Voir Dire

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1 COURT CLERK: C-a-r-t-e-r. First name
2 C-l-o-t-h-i-l-d-e. Joseph Mizzi, M-i-z-z-i.
3 Anna Campoverde, C-a-m-p-o-v-e-r-d-e, first name
4 A-n-n-a. Martin Cafferky, C-a-f-f-e-r-k-y.
5 M-a-r-t-i-n, first name. Amelia Foglia,
6 F-o-g-l-i-a. First name A-m-e-l-i-a. Ruth
7 Noonan, N-o-o-n-a, first name R-u-t-h. Last
8 seat, Maneul Alvarez, Alvarez. First name
9 M-a-n-u-e-l.

11 THE COURT: Ladies and gentlemen, as the
12 other prospective jurors have answered the
13 questions, I appreciate the rest of you would
14 familiarize yourself with the questions so that
15 you can prepare your answer and when your turn
16 comes you can give us the answers as the other
17 jurors did. So, as I told the other jurors, the
18 first six questions require a specific answer.
19 The others yes or no, if appropriate.

20 Start with you, ma'am.

21 PROSPECTIVE JUROR 1: One, 49. Two,
22 Flushing, Queens. Three, I'm a teacher. Four,
23 married. Five, Bachelors, degree plus. Six, my
24 spouse is a paper cutter and my daughter goes to
25 college. Seven, yes, two years ago, criminal

Voir Dire

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case. Eight, yes. Nine, no. Ten, no. Eleven, no. Twelve, no. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, no.

THE COURT: Thank you.

PROSPECTIVE JUROR 2: One, thirty seven. Two, Sunnyside, Queens. Three, purchasing. Four, divorced. Five, Bachelors plus. Six, not applicable. Seven, no. Eight, yes. Nine, no. Ten, no. Eleven, yes. Twelve, no. Thirteen, no. Fourteen, yes, Air Force. Fifteen, no. Sixteen, yes.

THE COURT: Thank you.

PROSPECTIVE JUROR 3: One, thirty. Two, Hollis, Queens. Three, manager for corporate travel agency. Four, married. Five, two years of college. Six, computer engineer plus he works for the city. Seven, no. Eight, yes. Nine, yes. Ten, yes. Eleven yes. Twelve, no. Thirteen, no. Fourteen, no. Fifteen, no and sixteen, yes.

THE COURT: Next.

PROSPECTIVE JUROR 4: One, forty five. Two, Flushing, Queens. Three, I'm a nurse. Four, married. Five, Bachelors. Six, my husband is a

Voir Dire

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nurse and I have three children in school; one works in a hospital. Seven, no. Eight, no. Nine, no. Ten, no. Eleven, no. Twelve, no. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, no.

THE COURT: Next.

PROSPECTIVE JUROR 5: One, 22. Two, Douglaston. Three, recent college graduate preparing for law school. Four, single. Five, four years of college. Six, not applicable. Seven, no. Eight, no. Nine, no. Ten, no. Eleven, no. Twelve, no. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, yes.

PROSPECTIVE JUROR 6: One, 29. Two, Little Neck, Queens. Three, teacher. Four, married. Five graduate degree. Six, my husband is a naval lieutenant and he works for the Army Corp. of engineers. No children. Seven, I was a witness few weeks ago on a case. Eight, yes. Nine, yes. Ten, no. Eleven, yes. Twelve no. Thirteen, possibly. Fourteen, no. Fifteen, no. Sixteen, no.

PROSPECTIVE JUROR 7: Number one, sixty eight. Two, Broad Channel, Queens. Three,

Voir Dire

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1
2 retired secretary. Four, married. Five, high
3 school graduate. Six, retired; my husband is
4 retired. I have two children. Son is a cop,
5 daughter housewife. Seven, yes, about ten years
6 ago, malpractice case. Eight, yes. Nine, yes.
7 Ten, no. Eleven, no. Twelve, no. Thirteen, no.
8 Fourteen, no. Fifteen, no. Sixteen, I'm
9 undecided.

10 THE COURT: We will pursue that. Thank you.

11 PROSPECTIVE JUROR 8: One, twenty eight.
12 Two, Jamaica. Three, I'm a photo re-toucher.
13 Four, single. Five, three years college. Six,
14 unapplicable. Seven, no. Eight, no. Nine, yes.
15 Ten, yes. Eleven, no. Twelve, no. Thirteen,
16 no. Fourteen, no. Fifteen, no. Sixteen, no.

17 THE COURT: Thank you. Next.

18 PROSPECTIVE JUROR 9: One, twenty five. Two,
19 Middle Village, Queens. Three, I work for motion
20 picture distribution. Four, single. Five, high
21 school. Six, doesn't apply. Seven, no. Eight,
22 yes. Nine, no. Ten, yes -- ten, no. I'm sorry.
23 Eleven, yes. Twelve, no. Thirteen, no.
24 Fourteen, no. Fifteen, no. Sixteen, no.

25 THE COURT: Thank you.

Voir Dire

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1
2 PROSPECTIVE JUROR 10: Number one, forty two.
3 Two, Far Rockaway, Queens. Three, I work on a
4 temporary basis as a secretary. Four, married.
5 Five, two-year Associate Degree. Six, mechanic.
6 Two children in college. No, number seven. No,
7 number eight. No, nine. No, ten. No, eleven
8 Yes, twelve. No, thirteen. No, fourteen. No,
9 fifteen. No, number sixteen. Possibly, I don't
10 know.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR 11: Two, Maspeth. Three,
13 mechanic, Port Authority, New Jersey. Four,
14 married. Separated, five. High school diploma.
15 Port Authority trade school, completed. Number
16 six, UPS. No children involved. Seven, no.
17 Eight, no. Nine, no. Ten, yes. Eleven, yes.
18 Twelve, no. Thirteen, no. Fourteen, no.
19 Fifteen, no. Sixteen, yes.

20 PROSPECTIVE JUROR 12: One, 31. Two,
21 Ridgewood, Queens. Three, I'm a case worker for
22 HRA. Four, married. Five, year and-a-half
23 college. Six, husband is a chef. Seven, no.
24 Eight, yes. Nine, no. Ten, yes. Eleven, no.
25 Twelve -- I'm sorry, number ten, no. Number

Voir Dire

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eleven, yes. Number twelve, no. Number thirteen, no. Number fourteen, no. Number fifteen, no. Sixteen, no.

PROSPECTIVE JUROR 13: One, 55. Flushing, Queens.

THE COURT: The number of the question, please.

PROSPECTIVE JUROR 13: One, 55. Two, Flushing, Queens. Three, self-employed carpenter. Four, not married. Number five, high school. Doesn't apply, number six. Number seven, no. Number eight, no. Number nine, yes. Number ten, no. Eleven, no. Twelve, no. Thirteen, no. Number fourteen, yes, army. Fifteen, yes. Number sixteen, yes.

PROSPECTIVE JUROR 14: Fifty --

THE COURT: Excuse me. Please, just a moment. You have to speak louder and you have to stop talking with the interpreter. It's like stereophonic sound.

PROSPECTIVE JUROR 14: One, fifty. Two, Howard Beach. Three, housewife. Four, married. Five, one-year high school. Six, husband is a painter. Seven, no. Eight, no. Nine, no. Ten,

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no. Eleven, no. Twelve, no. Thirteen, no.
Fourteen, no. Fifteen, no. Sixteen, yes.

PROSPECTIVE JUROR 15: Number one. 70.

Number two, Ridgewood, Queens. Three retired
secretary. Four, married. Five, high school.
Six, husband retired postman. Daughter is a
surgical nurse, lives in California. I lived --
Number seven, yes, five years ago. It was a drug
smuggling. Number eight, no. Nine, no. Ten,
no. Number eleven, yes. Number twelve, no.
Thirteen, no. Fourteen, no. Fifteen, no.
Sixteen, yes.

PROSPECTIVE JUROR 16: Number one, 33.

Number two, Woodside. Three, cable splicer for
NYNEX. Four, married. Five, two years of
college. Six, my wife works for an insurance
company. Seven, no. Eight, yes. 9, no. Ten,
yes. Eleven, yes. Twelve, no. Thirteen no.
Fourteen, no. Fifteen no. Sixteen, no.

THE COURT: Mr. Kessler?

VOIR DIRE EXAMINATION

BY: MR. KESSLER:

MR. KESSLER: Afternoon. Welcome to an
American Court of law. My name is Scott Kessler,

Voir Dire

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1
2 I'm an Assistant District Attorney. I'll be
3 asking you some questions again.

4 At any point in time if you prefer not to
5 talk about it it's perfectly all right. We can
6 approach as we have been doing with some of the
7 other jurors at side bar. I'll start, I guess,
8 with Miss Rebetta, how are you?

9 PROSPECTIVE JUROR 3: Yes?

10 MR. KESSLER: You had indicated that you can
11 fair and impartial?

12 PROSPECTIVE JUROR 3: I was thinking about
13 it. Possibly be no, but --

14 MR. KESSLER: Why do you say that?

15 PROSPECTIVE JUROR: Because one of the
16 questions here, have you ever been the victim,
17 and I have been a victim.

18 MR. KESSLER: What type of victim have you
19 been?

20 PROSPECTIVE JUROR 3: Can I approach the
21 bench?

22 MR. KESSLER: Sure.

23 (Discussion held at bench off the record)

24 MR. KESSLER: Miss Hicks, how are you?

25 PROSPECTIVE JUROR 2: Fine. How are you?

Voir Dire

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1

2

MR. KESSLER: First time as a juror?

3

PROSPECTIVE JUROR 2: Uh-hum.

4

MR. KESSLER: What do you think?

5

PROSPECTIVE JUROR 2: Interesting.

6

MR. KESSLER: Not like T.V.?

7

PROSPECTIVE JUROR 2: I don't watch

8

television

9

MR. KESSLER: Even better. Better off than

10

most of us. Nothing much anyway.

11

PROSPECTIVE JUROR 2: No, there isn't.

12

MR. KESSLER: You have friends in law

13

enforcement?

14

PROSPECTIVE JUROR: Friend is correctional

15

and husband is retired cop.

16

MR. KESSLER: There are sixteen different

17

charges, rape, kidnaping. Bottom line is, we

18

can't ask you to leave all those emotions behind

19

you, but the bottom line is, in this case you

20

have to decide this case on the law and the

21

evidence; can you do that?

22

PROSPECTIVE JUROR 2: Uh-hum.

23

MR. KESSLER: How about you, Miss Fontana,

24

can you be fair and impartial?

25

PROSPECTIVE JUROR: Yes.

Voir Dire

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1

2

MR. KESSLER: You're a teacher?

3

PROSPECTIVE JUROR: Yes.

4

MR. KESSLER: What grade?

5

PROSPECTIVE JUROR: High school.

6

MR. KESSLER: Do you believe in the criminal
justice system?

8

PROSPECTIVE JUROR: Definitely.

9

MR. KESSLER: Think it's fair?

10

PROSPECTIVE JUROR: Sometimes.

11

MR. KESSLER: Do you think that people should
have the burden of proving the defendant guilty?

13

PROSPECTIVE JUROR: Yes.

14

MR. KESSLER: If I prove the defendant's
guilt beyond a reasonable doubt would you have
any problem standing up, looking him in the eye
and saying he's guilty?

18

PROSPECTIVE JUROR: Definitely not.

19

MR. KESSLER: If at the end of this case I
fail to prove he's guilty or responsible for
this crime, will you stand up and find him guilty
anyway?

23

PROSPECTIVE JUROR 1: All right. My past
experience would --

24

25

MR. KESSLER: Is that a no or yes?

Voir Dire

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PROSPECTIVE JUROR: I might.

MR. KESSLER: You're saying you don't believe he's guilty of this crime? You're a teacher, 49 years old. Seem like a bright woman. You're telling me you're going to find him guilty even though you don't think he's guilty?

PROSPECTIVE JUROR: I'd have a problem finding a reasonable doubt if the evidence seemed like it was more in the direction of guilt because two years I served on a criminal case and I felt that it was -- he was guilty but we found it was a slight doubt and we couldn't convict him. I had a real problem with that.

MR. KESSLER: That's then. These are new jurors. Everyone obviously -- people have this human emotion to say, well, I think we should give a little to either side, some here, some there. But that's now how the system works. Understand if I prove to you ever count, even though you may like Mr. Schecter a lot, think he did a nice job, if I prove everything I have to beyond a reasonable doubt, you can't say, well, he did a nice job. You have an obligation to find him guilty on each count. Seem fair?

Voir Dire

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1
2 PROSPECTIVE JUROR: Definitely.

3 MR. KESSLER: At the end of this case you
4 like me but you feel I have not proven this case
5 beyond a reasonable doubt and you believe this
6 person is not guilty you can't say, well, find
7 him guilty for one count because we like
8 Mr. Kessler a lot.

9 THE COURT: That probably will never happen.

10 MR. KESSLER: In the realm of probability you
11 agree with that as well?

12 PROSPECTIVE JUROR 1: Yes.

13 MR. KESSLER: I'm talking about this case,
14 your opinion on this case. It's at the end of
15 this case if I prove the guilt. The simple
16 response is, if the evidence doesn't prove his
17 guilt beyond a reasonable doubt can you stand up
18 in this courtroom and say not guilty?

19 PROSPECTIVE JUROR 1: If I really felt that
20 the evidence --

21 MR. KESSLER: Prove his guilt beyond a
22 reasonable doubt.

23 PROSPECTIVE JUROR: I have a problem with
24 reasonable doubt.

25 MR. KESSLER: When you say a problem, the

Voir Dire

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1
2 Judge will explain what that word is. It's not
3 my job; it's not your job. You're not here to
4 determine what reasonable doubt is. The Judge
5 will explain that definition to you if it fits in
6 that definition. The Judge will explain
7 reasonable doubt, he'll give you that definition.

8 Can you find the defendant not guilty if you
9 don't believe I have proven the case beyond a
10 reasonable doubt?

11 PROSPECTIVE JUROR: I don't know.

12 MR. KESSLER: Okay. Miss Rego, motion
13 picture distributing?

14 PROSPECTIVE JUROR: Yes.

15 MR. KESSLER: What type of business is that?
16 You sell to movie theaters?

17 PROSPECTIVE JUROR: Yes.

18 MR. KESSLER: For a major company?

19 PROSPECTIVE JUROR: Twentieth Century Fox
20 Film Corporation.

21 MR. KESSLER: That's pretty big. You have
22 done that work for how long?

23 PROSPECTIVE JUROR: Three years.

24 MR. KESSLER: Let me ask you something. You
25 had indicated that you couldn't be a fair and

Voir Dire

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1
2 impartial juror?

3 PROSPECTIVE JUROR: That's right.

4 MR. KESSLER: Same questions. I prove the
5 case beyond a reasonable doubt would you be able
6 to stand up and say he's guilty?

7 PROSPECTIVE JUROR: Yes.

8 MR. KESSLER: If I fail to prove his case to
9 you, you believe he's not guilty, responsible for
10 this, any problem standing up and saying not
11 guilty?

12 PROSPECTIVE JUROR: I have a problem that if
13 he doesn't take the stand he's got something to
14 hide.

15 MR. KESSLER: Let me ask you this: That's
16 your basic human emotion?

17 PROSPECTIVE JUROR: Yes.

18 MR. KESSLER: Obviously everyone has an
19 emotion. The bottom line in this courtroom, the
20 Judge will instruct you. He will tell you what
21 the definition is of each of the crimes. Can you
22 follow his instructioin on that?

23 PROSPECTIVE JUROR: I don't believe in the
24 criminal justice system -- I believe in guilty
25 until proven innocent in sitting in a Court of

Voir Dire

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1
2 law as a defendant.

3 MR. KESSLER: So, if you were ever charged
4 with a crime you would want a jury to say you
5 were guilty?

6 PROSPECTIVE JUROR: Yeah. I would take the
7 stand to prove innocence if I was innocent.

8 MR. KESSLER: Would you have a problem if we
9 worked it differently her?

10 PROSPECTIVE JUROR: No.

11 MR. KESSLER: Miss Carter, how about you. We
12 will start with the premise I must prove the
13 defendant's guilt beyond a reasonable doubt,
14 that's how the law works, any problem with that?

15 PROSPECTIVE JUROR 10: Different facts are
16 there and it points to guilt, you're asking me if
17 I have a problem with saying he's guilty?

18 MR. KESSLER: If I prove his guilt do you
19 have any problem saying he's guilty?

20 PROSPECTIVE JUROR 10: No.

21 MR. KESSLER: Stand up and look him in the
22 eye? Any problem doing that?

23 PROSPECTIVE JUROR 10: No.

24 MR. KESSLER: Do you think that's an easy
25 thing to do? You seem hesitant?

Voir Dire

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1
2 PROSPECTIVE JUROR 10: Depending on what the
3 facts are.

4 MR. KESSLER: What do you mean by depending
5 on the facts?

6 PROSPECTIVE JUROR: The weight of the facts.
7 I guess depends. Well, the weight. Fact is
8 fact. If he's guilty, if he's not. I guess it
9 depends on, you know, if you -- if the facts
10 point to his guilt, yes, I'll, you know, i'll go
11 along with that.

12 MR. KESSLER: Seems fair?

13 PROSPECTIVE JUROR 10: Yes.

14 MR. KESSLER: Okay. I guess my question
15 is -- I'm not really sure. One person comes in
16 this courtroom and says I was kidnapped, I was
17 raped. You believe that person to be truthful
18 and credible beyond a reasonable doubt. Any
19 problem convicting based solely upon that one
20 witness's word.

21 PROSPECTIVE JUROR 10: Yeah, that might be a
22 problem.

23 MR. KESSLER: Is that something you say in
24 your heart, I really need to hear more witnesses?

25 PROSPECTIVE JUROR 10: You know, depends on

Voir Dire

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1
2 the witness, depends on the person and what I get
3 from that person's testimony. If I feel that the
4 person -- it would be nice to have more than one
5 witness. It would be nice to hear the other side
6 of the story.

7 MR. KESSLER: Sometimes crimes aren't
8 committed in front of a lot of people and
9 sometimes you don't hear both sides, fact of
10 life. How about this case; can you decide this
11 case if you only hear one side?

12 PROSPECTIVE JUROR 10: Possibly, given that
13 it's a rape case. Possibly. Depends on the
14 facts. Depends on what facts were presented.

15 MR. KESSLER: Okay. My only concern is --

16 PROSPECTIVE JUROR 10: I feel I'm a fair
17 person. I can only guess and say, yes, I'll be
18 fair, you know. The fact that it is a rape case
19 you're not going to hear the other side of the
20 story. That's plays in the background also.
21 That's always in the background.

22 MR. KESSLER: Can you follow the judge's
23 instructions on this case?

24 PROSPECTIVE JUROR: Yes, I can.

25 MR. KESSLER: My only concern is this:

Voir Dire

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1
2 I said to you before, if you believe this
3 person to be truthful and credible and you
4 believe I've proven everything I have to prove
5 through the witness, yes or no, do you have any
6 problem convicting based solely upon that
7 witness's word?

8 PROSPECTIVE JUROR: No.

9 MR. KESSLER: That's all I ask.

10 Mr. Mizzi, how are you?

11 PROSPECTIVE JUROR 11: Fine. How are you?

12 MR. KESSLER: You indicated you be a fair and
13 impartial juror?

14 PROSPECTIVE JUROR: Yes.

15 MR. KESSLER: Tell me the reasons why you
16 think you be fair in this case?

17 PROSPECTIVE JUROR: Sure. Everybody is
18 innocent until proven guilty. That's how I
19 believe. I do watch T.V. I watch the news and
20 everybody is entitled to a fair trial, whatever
21 they consider it. Whether he testifies or not,
22 that's fine with me. Look at OJ, he didn't
23 testify. He walked free, correct? As long as
24 the facts are there. If the facts are there
25 he's guilty,.

Voir Dire

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1
2 MR. KESSLER: Let the cards fall as they may?

3 PROSPECTIVE JUROR 11: Yes, sir.

4 MR. KESSLER: Common sense. Do you think
5 that's the important thing you have got going?

6 PROSPECTIVE JUROR 11: Common sense has a lot
7 to do with your life style. It's not always
8 based on common sense, it's based on facts.

9 MR. KESSLER: If the facts in this case show
10 you that one person comes into this courtroom and
11 you believe that person to be truthful and
12 credible and I prove everything I have to through
13 that one person, any problem convicting?

14 PROSPECTIVE JUROR: No problem convicting
15 solely on that person. Once again, if the
16 credibility is incorrect about that witness and
17 the witness is incorrect about their statements
18 are inaccurate, then I can't convict solely upon
19 that witness.

20 MR. KESSLER: You have to believe her?

21 PROSPECTIVE JUROR: Yes.

22 MR. KESSLER: And you said accurate?

23 PROSPECTIVE JUROR: Accurate. But it's
24 proven it's inaccurate then it will be a
25 different story.

Voir Dire

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1
2 MR. KESSLER: Proven inaccurate. Understand
3 the people here you said we are not television
4 actors?

5 PROSPECTIVE JUROR: Yes, sir.

6 MR. KESSLER: Do you think if I asked these
7 twelve people what color suit I wore yesterday
8 and what color tie, do you think all would get it
9 right?

10 PROSPECTIVE JUROR: Yes.

11 MR. KESSLER: Do you think all twelve saw me
12 yesterday?

13 PROSPECTIVE JUROR: Yes.

14 MR. KESSLER: Were you here yesterday?

15 PROSPECTIVE JUROR: Yes.

16 MR. KESSLER: You saw me?

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. KESSLER: If I asked you what color suit
19 and tie would you be able to tell me?

20 PROSPECTIVE JUROR: Yes.

21 MR. KESSLER: Doesn't mean I didn't wear a
22 suit or tie does it? When you say accurate,
23 understand we are talking about real facts and
24 real circumstances? You'll consider that when
25 you consider this case?

Voir Dire

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PROSPECTIVE JUROR: Yes.

MR. KESSLER: Thanks very much.

You had indicated about accused of a crime,
you knew someone. Do you want to talk about it
in public or side bar?

PROSPECTIVE JUROR 11: I have no shame. Back
in 1990 I was arrested for possession of burglary
tools, misdemeanor, three years probation.

MR. KESSLER: Were you guilty?

PROSPECTIVE JUROR: Excuse me? No, sir.

MR. KESSLER: Any problem with the way the
police treated you?

PROSPECTIVE JUROR: No, sir.

MR. KESSLER: Problem with the way the
District Attorney's office treated you?

PROSPECTIVE JUROR 11: No.

MR. KESSLER: The Judge?

PROSPECTIVE JUROR: no.

MR. KESSLER: You're a lawyer?

PROSPECTIVE JUROR 11: No, not at all.

MR. KESSLER: Mr. Bears, how are you?

PROSPECTIVE JUROR 8: Fine.

MR. KESSLER: Can you be fair? Can't be fair
and impartial, you indicated no?

Voir Dire

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1
2 PROSPECTIVE JUROR 8: I don't know. It's
3 hard to say. I don't know yet.

4 THE COURT: Wait a minute. The Court
5 Reporter can't get the jurors' answer. You have
6 to speak up so the Court Reporter can hear you.
7 If he can't hear you I'm going to have a problem.

8 MR. KESSLER: You indicated your opinionated.
9 You said this is a tough call, the nature of the
10 charges?

11 PROSPECTIVE JUROR 8: Yes.

12 MR. KESSLER: You knew somebody who or spoke
13 to someone about similar circumstances, without
14 getting into detail, is that what you're
15 concerned with?

16 PROSPECTIVE JUROR 8: I just feel that what's
17 going on in my mind with the nature of the crime,
18 I just feel it's wrong.

19 THE COURT: Sir, you have to speak up.

20 MR. KESSLER: Unfortunately, there's rules in
21 the courtroom. Everything has to be taken down.

22 You indicated it was a gross violation of a
23 person?

24 PROSPECTIVE JUROR: (No response)

25 MR. KESSLER: My question, I guess, to you,

Voir Dire

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1
2 when we talk about fair and impartial we are
3 talking about -- there's an indictment before the
4 Court. We are here to try this case and here to
5 decide what the facts are.

6 Can you have the ability in this case to put
7 aside your personal beliefs about rape and
8 kidnaping and decide this case fairly and
9 impartially?

10 PROSPECTIVE JUROR 8: No.

11 MR. KESSLER: Fair answer. Thanks.

12 Mr. Alvarec, how are you?

13 PROSPECTIVE JUROR 16: Yes?

14 MR. KESSLER: You indicated you couldn't be
15 fair?

16 PROSPECTIVE JUROR 16: Yes, sir.

17 MR. KESSLER: How are you, ma'am?

18 PROSPECTIVE JUROR 15: Fine, thank you.

19 MR. KESSLER: Ridgewood. You lived there
20 awhile?

21 PROSPECTIVE JUROR 15: About forty years.

22 MR. KESSLER: That's a while. I have that
23 your husband is postman?

24 PROSPECTIVE JUROR 15: He's retired and I'm
25 retired.

Voir Dire

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1
2 MR. KESSLER: Have you ever served before?

3 PROSPECTIVE JUROR 15: Yes.

4 MR. KESSLER: That's what I have down, drug
5 smuggling case?

6 PROSPECTIVE JUROR: Yes, about five years
7 ago.

8 MR. KESSLER: Now I remember. Did you
9 deliberate and reach a verdict?

10 PROSPECTIVE JUROR: We did.

11 MR. KESSLER: Any problems with the way that
12 situation was handled?

13 PROSPECTIVE JUROR 15: No, we all agreed.

14 MR. KESSLER: Was it a bad experience?

15 PROSPECTIVE JUROR: No.

16 MR. KESSLER: Some people, they get the
17 reaction of jurors. They feel like they have
18 just been, you know, placed in the worst
19 situation. It wasn't so bad?

20 PROSPECTIVE JUROR 15: No, it wasn't.

21 MR. KESSLER: You decided that case fairly
22 and impartially?

23 PROSPECTIVE JUROR: We believe we did.

24 MR. KESSLER: Can you do the same here?

25 PROSPECTIVE JUROR: Yes.

Voir Dire

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1
2 MR. KESSLER: Thank you. Terrific. That's
3 all I ask. Miss Kinneary?

4 PROSPECTIVE JUROR 7: Hi.

5 MR. KESSLER: How are you? Retired
6 secretary, what type of work?

7 PROSPECTIVE JUROR 7: Insurance secretary.

8 MR. KESSLER: How long did you do that work?

9 PROSPECTIVE JUROR 7: Twenty one years.

10 MR. KESSLER: Your husband is retired as
11 well?

12 PROSPECTIVE JUROR: Retired plant foreman.

13 MR. KESSLER: You have two kids, one is a
14 police officer?

15 PROSPECTIVE JUROR 7: Yes, U.S. Parks
16 Police.

17 MR. KESSLER: He works in parks?

18 PROSPECTIVE JUROR 7: Works in the Statue of
19 Liberty at Ellis Island.

20 MR. KESSLER: Understand this case we talked
21 about fairness and impartiality, has to be
22 decided by twelve jurors; if I prove to you the
23 defendant's guilt beyond a reasonable doubt what
24 would your verdict be?

25 PROSPECTIVE JUROR 7: I think it would be

Voir Dire

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1
2 guilty.

3 MR. KESSLER: I would hope so. Any problem
4 standing up and looking the defendant in the eye
5 and saying he's guilty if I proved his guilt?

6 PROSPECTIVE JUROR: Not if you prove it.

7 MR. KESSLER: If I don't?

8 PROSPECTIVE JUROR: Then he's innocent.

9 MR. KESSLER: You said you were undecided
10 whether you'd be fair?

11 PROSPECTIVE JUROR 7: You know, it's the
12 nature of the case. I have a bad habit of
13 pre-judging people and I can't see a woman get up
14 on the stand and say she was raped and lie about
15 it because it's just goes against my nature. And
16 he's here. I feel he's here for a reason. As I
17 say, I'm pre-judging so that's why I say I hope
18 I'd be fair.

19 MR. KESSLER: When you say prejudging,
20 obviously, the defendant is here. He's standing
21 on trial. He's been indicted by a grand jury.
22 The Judge will tell you you can't consider that
23 as evidence. Okay you have to decide this not
24 upon what happened before, but what happens in
25 this courtroom. Seem fair?

Voir Dire

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1 PROSPECTIVE JUROR: Yes.

2 MR. KESSLER: Can you follow the judge's
3 instructions?
4

5 PROSPECTIVE JUROR 7: Yes.

6 MR. KESSLER: When you talk about people who
7 testify, you say why would a woman lie about
8 rape. People lie, people tell the truth, people
9 could be mistaken. It's human nature.

10 PROSPECTIVE JUROR 7: Yeah.

11 MR. KESSLER: You have to agree with that?

12 PROSPECTIVE JUROR 7: Yeah.

13 MR. KESSLER: You can't tell me no one in
14 your life, no one has every not lied to you?

15 PROSPECTIVE JUROR 7: Right.

16 MR. KESSLER: You have to make decisions
17 about?

18 PROSPECTIVE JUROR 7: We have to make our
19 own opinion.

20 MR. KESSLER: In this case we ask you --
21 there's no special rule, no light will go off
22 that will say the 68 years you have as common
23 sense, you'll use to decide if this person is
24 telling the truth, can you do that?

25 PROSPECTIVE JUROR 7: Yes.

Voir Dire

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MR. KESSLER: That's being fair. Miss Demarinis?

PROSPECTIVE JUROR 6: Yes?

MR. KESSLER: Teacher?

PROSPECTIVE JUROR: Yes.

MR. KESSLER: Teach what?

PROSPECTIVE JUROR: Grammar school.

MR. KESSLER: What grade?

PROSPECTIVE JUROR: All of them.

MR. KESSLER: Is that on the naval base?

PROSPECTIVE JUROR: No, in catholic schools.

MR. KESSLER: You were a witness a few weeks ago?

PROSPECTIVE JUROR 6: Yes.

MR. KESSLER: Here in Queens County?

PROSPECTIVE JUROR: No, I was in Supreme Court downtown.

MR. KESSLER: Manhattan?

PROSPECTIVE JUROR: Yes.

MR. KESSLER: You testified in a criminal matter or civil matter?

PROSPECTIVE JUROR: I didn't actually get up on the stand. I discussed the matter with the two sides, with the lawyers.

Voir Dire

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1
2 MR. KESSLER: Was that criminal matter?

3 PROSPECTIVE JUROR: No, it was civil.

4 MR. KESSLER: Do you have a religious
5 problem?

6 PROSPECTIVE JUROR 6: On the grounds that if
7 the prosecution is going to call up witnesses,
8 they are under oath, and I can't see why they
9 would be lying if they are under oath.

10 MR. KESSLER: Can you agree with me that in
11 the history of the world there have been people
12 have lied under oath?

13 PROSPECTIVE JUROR: Sure.

14 MR. KESSLER: And people who tell the truth
15 under oath?

16 PROSPECTIVE JUROR: Uh-hum.

17 MR. KESSLER: I was talking about Miss
18 Kinneary using common experience to determine if
19 a person is lying, telling truth or mistaken; do
20 you think you can decide based on your common
21 sense whether that person is lying, telling the
22 truth or mistaken? Can you do that?

23 PROSPECTIVE JUROR 6: I would hope they are
24 not lying if they are up there under oath, you
25 know.

Voir Dire

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2 MR. KESSLER: Obviously they take an oath to
3 tell the truth. We are already in agreement,
4 people take an oath and lie. Wouldn't be the
5 first time. Famous people have done it.

6 My question to you is simply:

7 Can you give this person, when they testify,
8 decide whether or not, using your common sense,
9 experience, whether or not they are lying,
10 telling the truth or mistaken?

11 PROSPECTIVE JUROR 6: Hopefully I can tell if
12 they are telling the truth.

13 PROSPECTIVE JUROR: If they are lying or
14 mistaken, someone could take the oath and be
15 mistaken -- I think that's him but be totally
16 mistaken, right?

17 PROSPECTIVE JUROR 6: Um, for what the case
18 is based on. If it's rape or kidnaping, I don't
19 see how somebody could be mistaken.

20 PROSPECTIVE JUROR: I'm not talking about
21 this case, I'm talk about in general.

22 PROSPECTIVE JUROR 6: It's a hypothetical,
23 what are you discussing?

24 MR. KESSLER: I'm discussing whether or not
25 you could use common sense and not make up your

Voir Dire

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1
2 mind based solely on them coming into a courtroom
3 and raising their hand?

4 PROSPECTIVE JUROR 6: Like I said, I hope
5 they are.

6 MR. KESSLER: So, would everyone -- do you
7 believe there's a possibility someone could come
8 into a courtroom and lie?

9 PROSPECTIVE JUROR 6: Sure.

10 MR. KESSLER: Possibility they could come in
11 and TELL the truth. My question is:

12 Can you evaluate this witness's testimony on
13 this case to determine whether or not this
14 witness is telling the truth or lying, using your
15 common sense experience?

16 PROSPECTIVE JUROR 6: Okay, yes.

17 MR. KESSLER: Can you follow the judge's
18 instruction on the LAW, whatever it is, whether
19 you believe it or not disbelieve it? Can you
20 follow the law?

21 PROSPECTIVE JUROR 6: I'd have to.

22 MR. KESSLER: Deliberate with other jurors if
23 chosen and decide this case fairly and
24 impartially, seem fair to you?

25 PROSPECTIVE JUROR 6: Hopefully their

Voir Dire

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1
2 expectation of what they had seen wouldn't
3 infringe on what my decision was.

4 MR. KESSLER: Obviously during deliberations
5 there may be different points much view. You
6 have an obligation to discuss it with the other
7 jurors. You can do that given what your opinion
8 is, listen to what they say?

9 PROSPECTIVE JUROR 6: Uh-hum.

10 MR. KESSLER: Bottom line is this:

11 It's the end of this case. I prove the
12 defendant's guilt beyond a reasonable doubt,
13 what's your verdict?

14 PROSPECTIVE JUROR 6: I can't answer that
15 right now. I don't know.

16 MR. KESSLER: Understand, it's a
17 hypothetical. If I prove to you his guilt, do
18 you have any problem looking him in the eye and
19 saying he's guilty?

20 PROSPECTIVE JUROR 6: I don't know. I might.

21 MR. KESSLER: Why is that?

22 PROSPECTIVE JUROR: I would hope I would
23 never see him on the street again. He might
24 remember me.

25 MR. KESSLER: You're saying if I proved to

Voir Dire

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1
2 you his guilt beyond a reasonable doubt you would
3 be hesitant to say guilty because you're worried
4 about your fear?

5 PROSPECTIVE JUROR 6: I might be.

6 MR. KESSLER: How about Miss Lee. If I
7 proved the defendant's guilt beyond a reasonable
8 doubt would you have any problem looking him in
9 the eye and saying guilty?

10 PROSPECTIVE JUROR 5: Do I have to look him
11 in the eye?

12 THE COURT: That's a good question. I guess
13 you can look down and say it. Understand,
14 obviously, no one likes to find someone guilty;
15 it's not a pleasant thing. Our law requires
16 anyone who's found guilty by a jury of their
17 peers, the jury has to deliberate and all come to
18 one vote, say guilty. It's really not you, it's
19 really a jury of twelve.

20 My concern is:

21 There are people out there who say I don't
22 have the something inside of me to say I can't
23 find someone guilty. Do you ever any problem
24 finding someone guilty if you find them to be
25 guilty?

Voir Dire

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PROSPECTIVE JUROR 5: No.

MR. KESSLER: So, at the end of this case if I proved the defendant's guilt beyond a reasonable doubt will you be able to return a verdict of guilty?

PROSPECTIVE JUROR 5: Yes.

MR. KESSLER: If I fail to prove his guilt beyond a reasonable doubt return a verdict of not guilty?

PROSPECTIVE JUROR 5: Yes.

MR. KESSLER: Miss Riley, how are you?

PROSPECTIVE JUROR 4: Okay.

MR. KESSLER: I didn't write down your final response; whether you be fair and impartial.

PROSPECTIVE JUROR 4: I said no.

MR. KESSLER: Have you ever been a juror Before?

PROSPECTIVE JUROR: No.

MR. KESSLER: If I proved to you the defendant's guilt would you have any problem standing up finding him guilty?

PROSPECTIVE JUROR: I would have to hear his statement, his side of the story.

MR. KESSLER: The Judge told you already that

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1
2 the defendant has no obligation to take the
3 stand, to put on any evidence, that I have the
4 obligation to prove his guilt. At the end of
5 this case, you don't hear his side and the facts
6 you only hear is one side, my witnesses, the
7 Judge tells you you can't -- you only have to
8 consider the evidence you hear, can you follow
9 that instruction?

10 PROSPECTIVE JUROR 4: I would have a problem
11 because I know there's always two sides of a
12 story and I would wonder why he's not saying
13 something.

14 MR. KESSLER: If the Judge told you shouldn't
15 consider it you couldn't follow it?

16 PROSPECTIVE JUROR: I would have a problem,
17 yes.

18 MR. KESSLER: Miss Campoverde?

19 PROSPECTIVE JUROR 12: Hi.

20 MR. KESSLER: You indicated you have a
21 physical ailment?

22 PROSPECTIVE JUROR 12: No.

23 MR. KESSLER: I'm sorry, you said you can't
24 answer the last question? You said, I believe --
25 maybe I'm mistaken, oh, you said you couldn't be

Voir Dire

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1
2 fair and impartial?

3 PROSPECTIVE JUROR 12: No.

4 MR. KESSLER: Is that based upon any type of
5 philosophical or religious problem you have?

6 PROSPECTIVE JUROR: No.

7 MR. KESSLER: Based upon your work?

8 PROSPECTIVE JUROR: No.

9 MR. KESSLER: Is it based upon the nature of
10 the charges?

11 PROSPECTIVE JUROR 12: Yes.

12 MR. KESSLER: Is it the kidnaping?

13 PROSPECTIVE JUROR: No.

14 MR. KESSLER: The gun possession?

15 PROSPECTIVE JUROR: No.

16 MR. KESSLER: Must be the rape?

17 PROSPECTIVE JUROR: Yes.

18 MR. KESSLER: Is it the problem hearing
19 testimony about it?

20 PROSPECTIVE JUROR: Yes.

21 MR. KESSLER: You're saying is -- have you
22 ever spoken to anybody about rape?

23 PROSPECTIVE JUROR 12: Yes.

24 MR. KESSLER: Is it that conversation that
25 would cause you not to be fair and impartial in

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this case?

PROSPECTIVE JUROR 12: Yes.

MR. KESSLER: Thank you. Mr. Cafferky?

PROSPECTIVE JUROR 13: Yes?

MR. KESSLER: I just have one question for you. You said you were a self-employed carpenter?

PROSPECTIVE JUROR 13: Yes.

MR. KESSLER: How long have you done that type of work?

PROSPECTIVE JUROR 13: Four years.

MR. KESSLER: You indicated on one of your questions you have some type of physical ailment?

PROSPECTIVE JUROR 13: I have a back problem, herniated disc in my back. I'm under a doctor's care. I have problem sitting.

PROSPECTIVE JUROR 14: I forgot to say I can't hear in this ear. I have to keep going like that.

MR. KESSLER: Have you had a problem hearing what I said?

PROSPECTIVE JUROR 14: I have to keep going like this. Plus I went to school in Italy. Some things I understand, some I don't.

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2 MR. KESSLER: What percentage of what I've
3 been saying do you understand?

4 PROSPECTIVE JUROR 14: I understand to -- I
5 went one year here, back and forth. That's how I
6 became a citizen.

7 MR. KESSLER: I think I've spoken to
8 everyone. Well, I thank everyone for their
9 honesty and their candor during the jury
10 selection process. As you know, we have been
11 trying to pick jurors that will be fair and
12 impartial to both sides, the People and the
13 defendant.

14 I guess the bottom line is, if I prove the
15 defendant's guilt beyond a reasonable doubt, I'm
16 looking for twelve people who have the ability to
17 come into this courtroom and say you're guilty,
18 the facts prove your guilt or if I fail to prove
19 his guilt. Let the cards fall as they may. No
20 preconceived judgments on whether someone
21 committed this crime, based on race or religion,
22 but the facts and circumstance here.

23 Only thing I ask, that you abide by that
24 assurance that if I prove the defendant's guilt
25 beyond a reasonable doubt based upon the evidence

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1
2 you'll be able to find the defendant guilty or if
3 I fail to. I appreciate everyone's time and
4 efforts.

5 THE COURT: Mr. Schechter?

6 VOIR DIRE EXAMINATION

7 BY: MR. SCHECTER:

8 MR. SCHECTER: Good morning, everyone.

9 We have been going at this for a while. I
10 may not speak to everyone. You won't be upset
11 about that?

12 You've heard what I said up to now on the
13 other round. I'll ask you this: Directing it to
14 certain people, the type of crime we are dealing
15 here, the alleged kidnaping and the alleged rape,
16 a lot of you said you couldn't be fair and
17 impartial because of the type of crime, you would
18 side more with, I guess -- with the victim who
19 would come into Court and testify that she would
20 not lie.

21 Miss Kinneary, even though the question was
22 not directed at you, it was directed at Miss
23 Demarinis, but you were shaking your head, yes,
24 when you were saying that. How could someone
25 come in here and make statements about being

Voir Dire

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1
2 kidnaped and raped if it wasn't true? Am I
3 correct? You have to answer yes.

4 PROSPECTIVE JUROR 7: I'm sorry, yes.

5 MR. SCHECTER: In other words then, if a
6 witness takes the witness stand and says
7 whatever, do you tend more to believe her than
8 not without listening to her entire testimony?

9 PROSPECTIVE JUROR 7: I might, yes.

10 MR. SCHECTER: Does that mean you can't give
11 my client a fair trial?

12 PROSPECTIVE JUROR 7: As I say, I have a
13 tendency to prejudge and it might sway my
14 thinking.

15 MR. SCHECTER: As you sit here you believe

16 PROSPECTIVE JUROR 7: I think he's here for
17 a reason.

18 MR. SCHECTER: So, in other words, if you
19 were told to go in the back without hearing
20 evidence he would have that one strike against
21 him?

22 PROSPECTIVE JUROR 7: He may, to be honest.

23 MR. SCHECTER: That's all we are looking for.
24 Everyone comes in here, I'd like to say, with no
25 biases or prejudices, but that's not correct.

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2 Because everyone, however old you are, everyone
3 comes in here with their life experiences. And
4 as much as we like to think we could be unbiased
5 and unprejudiced, a lot of us aren't.

6 Miss Hicks, do you have any problem with the
7 type of crime we are dealing here with?

8 PROSPECTIVE JUROR 2: I have a problem with
9 the crime, yeah.

10 MR. SCHECTER: Just because the type of
11 crime, do you think would that prejudice you
12 against my client or could you give him a fair
13 trial?

14 PROSPECTIVE JUROR 2: I feel I can give him a
15 fair hearing.

16 MR. SCHECTER: Do you think he's going in
17 with one strike at this moment?

18 PROSPECTIVE JUROR: No, I don't feel he is.

19 MR. SCHECTER: Realize we don't have any
20 burden whatsoever?

21 PROSPECTIVE JUROR 2: Yeah.

22 MR. SCHECTER: Do you have a problem with
23 that?

24 PROSPECTIVE JUROR: No.

25 MR. SCHECTER: If he doesn't testify, we

Voir Dire

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2 don't call any witnesses, do you have a problem?

3 PROSPECTIVE JUROR 2: I feel there's a
4 certain cynicism and suspicion if someone doesn't
5 testify on their own behalf, but I also hold on.
6 I also feel that I'm capable of separating
7 emotional from analytical.

8 MR. SCHECTER: In other words, the Judge
9 tells you that there's no burden for us to call
10 any witnesses and for him to testify; you could
11 put whatever your beliefs are and listen to the
12 evidence or lack of evidence and make your
13 decision based on that?

14 PROSPECTIVE JUROR 2: Yes, I do.

15 MR. SCHECTER: And if we don't -- if he
16 doesn't testify or call any witnesses at the end
17 of the entire case, you have a doubt from
18 whatever -- the evidence you heard or the lack of
19 evidence, do you have any problem with standing
20 up and saying not guilty?

21 PROSPECTIVE JUROR 2: No.

22 MR. SCHECTER: You're uncle is a retired
23 police officer; does he ever discuss his work
24 with you?

25 PROSPECTIVE JUROR 2: No.

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2 MR. SCHECTER: That won't affect you one way
3 or the other?

4 PROSPECTIVE JUROR 2: No.

5 MR. SCHECTER: Been the victim of a crime or
6 relatives?

7 PROSPECTIVE JUROR 2: I have been the victim
8 of a crime.

9 MR. SCHECTER: What type of crime?

10 PROSPECTIVE JUROR: Broken into my home.

11 MR. SCHECTER: You won't hold it against my
12 client?

13 PROSPECTIVE JUROR 2: No.

14 MR. SCHECTER: Miss Carter, you said you
15 would like to hear both sides?

16 PROSPECTIVE JUROR 10: Yes.

17 MR. SCHECTER: Under our law there's no
18 obligation to hear both sides. If we don't call
19 any witnesses, he doesn't take the stand, will
20 you hold it against him?

21 PROSPECTIVE JUROR 10: Well, in a Court of
22 law you don't have to call any witnesses.

23 MR. SCHECTER: We are in a Court of law.

24 PROSPECTIVE JUROR 10: You said you're not
25 going to call?

Voir Dire

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2 MR. SCHECTER: I'm not saying we are or we
3 are not, but under our law we don't have to.
4 Let's assume we don't. You said that it's nice
5 to hear both sides. A lot of times people aren't
6 nice. Would that affect you in your
7 deliberation?

8 PROSPECTIVE JUROR 10: It depends on the
9 witnesses that were called.

10 MR. SCHECTER: You can't give me a straight
11 answer?

12 PROSPECTIVE JUROR: What was the question?

13 MR. SCHECTER: If we don't call any witnesses
14 and Mr. Zheng does not take the witness stand,
15 are you going to hold that against him?

16 PROSPECTIVE JUROR 10: I would, and I said
17 again, I would like to hear the other side.

18 MR. SCHECTER: What happens if you don't,
19 you're not sure?

20 PROSPECTIVE JUROR 10: I'm not sure.

21 MR. SCHECTER: That's fine. Thank you.
22 Mr. Cafferky, you said you have a physical
23 disability. Let's assume -- can you sit here an
24 hour and-a-half at a time or what would be the
25 length of time?

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2 PROSPECTIVE JUROR 13: I've been on a cane
3 for a month now I didn't realize I couldn't sit
4 in one position because I didn't have to.
5 Normally moving around.

6 MR. SCHECTER: I guess for the past day
7 you've been seated here or there, have you had a
8 problem?

9 PROSPECTIVE JUROR 13: Yes, I have.

10 MR. SCHECTER: That's fine. Miss Foglia, you
11 also said you couldn't be fair?

12 PROSPECTIVE JUROR 14: If I could understand
13 everything, but I don't. Because I didn't go to
14 schools here. Like I said, I went to school in
15 Italy and I don't understand everything.

16 MR. SCHECTER: Do you have a problem hearing?

17 PROSPECTIVE JUROR 14: Yes. Like my ear
18 clogs and, you know, back and forth.

19 MR. SCHECTER: Miss Noonan, any problems with
20 any of the concepts I brought up to now?

21 PROSPECTIVE JUROR 15: No.

22 MR. SCHECTER: Give him a fair trial?

23 PROSPECTIVE JUROR 15: Try to.

24 MR. SCHECTER: The type of crime, or
25 whatever, that, in and of itself, will not make

Voir Dire

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1
2 you side with the prosecution?

3 PROSPECTIVE JUROR 15: No.

4 MR. SCHECTER: If the evidence is
5 insufficient any problem standing up and saying
6 not guilty?

7 PROSPECTIVE JUROR 15: No.

8 MR. SCHECTER: Miss Lee, did you say you were
9 in law school?

10 PROSPECTIVE JUROR 5: No, I'm preparing.

11 MR. SCHECTER: You say you couldn't be fair
12 and impartial?

13 PROSPECTIVE JUROR 5: I said, yes, I could
14 be.

15 MR. SCHECTER: Any reason why you can't be --
16 if my client doesn't testify, any problem with
17 that.

18 PROSPECTIVE JUROR 5: No.

19 MR. SCHECTER: If we don't call any witnesses
20 any problem with that?

21 PROSPECTIVE JUROR: No.

22 MR. SCHECTER: Listen to the testimony, or
23 the lack of it, and make your decision based on
24 that?

25 PROSPECTIVE JUROR 5: Yes.

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MR. SCHECTER: I haven't been speaking very long, Mr. Kessler hadn't. Anyone want to tell me anything you think I should know? Thank you all.

THE COURT: Thank you. Both counsel consult. When you're ready step inside. Excuse us for a few moments.

(The following occurs in the robing room outside the presence of the defendant and the prospective jury.

COURT CLERK: Third round of challenges, People versus Zheng. We have eight, we need four.

Challenges for cause, people?

MR. KESSLER: One, three and four.

MR. SCHECTER: No objection.

THE COURT: I'll allow it.

COURT CLERK: Defense, cause?

MR. SCHECTER: No.

THE COURT: Perempt, people?

MR. KESSLER: No.

MR. SCHECTER: Yes, I challenge two.

COURT CLERK: Defense is using his sixth perempt.

THE COURT: Next four. Lee through Bears.

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Cause, people?

MR. KESSLER: Juror six, Miss Demarinis. She doesn't want to serve under any circumstances. She's an intelligent woman.

THE COURT: Off the record.

(Discussion held off the record)

THE COURT: Any objection by defense on Lisa Demarinis?

MR. SCHECTER: No.

MR. KESSLER: Bears for cause and Demarinis.

COURT CLERK: Any objection to Bears?

MR. SCHECTER: I would love to, no.

COURT CLERK: That's a consent.

THE COURT: Cause, defense.

MR. SCHECTER: Kinneary said she couldn't be fair.

THE COURT: I'll allow it.

COURT CLERK: That's cause.

THE COURT: Perempt challenges, people?

MR. KESSLER: Miss Lee.

COURT CLERK: That's your third perempt, people.

THE COURT: Next four, Rego through Campoverde. Cause, people?

Voir Dire

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2 MR. KESSLER: Miss Rego and --

3 MR. SCHECTER: No objection.

4 MR. KESSLER: And Campoverde, been involved
5 in some kind of rape.

6 MR. SCHECTER: No objection.

7 THE COURT: Challenges for cause by defense?

8 MR. SCHECTER: Miss Carter. She said also if
9 we don't call any witnesses she can't be fair.

10 THE COURT: I'll allow it.

11 COURT CLERK: No objection?

12 MR. KESSLER: No objection.

13 COURT CLERK: Perempt, people?

14 MR. KESSLER: I perempt Mizzi.

15 COURT CLERK: Next four, Cafferky through
16 Alvarez, cause?

17 MR. KESSLER: Cafferky has a physical
18 ailment.

19 MR. SCHECTER: No objection.

20 MR. KESSLER: Foglia can't speak English.

21 MR. SCHECTER: No objection.

22 MR. KESSLER: Alvarez said he couldn't be
23 fair, but I can't remember why. Now, do you
24 have --

25 THE COURT: Alvarez for cause. Any

Voir Dire

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objection?

MR. SCHECTER: No. And no objection for Noonan for cause.

THE COURT: Did you challenge? Anymore challenges for cause?

MR. KESSLER: Only challenge I have is Cafferky, Foglia and Alvarez.

COURT CLERK: No challenge for cause as to juror Noonan?

MR. KESSLER: No cause.

MR. SCHECTER: No cause.

THE COURT: Perempt, people?

MR. KESSLER: None.

MR. SCHECTER: No.

COURT CLERK: Ruth Noonan will be juror nine.

(The following occurs in open court.)

COURT CLERK: Jurors, the entire panel is dismissed with the exception of Ruth Noonan. All the rest of you, if you wouldn't mind stepping outside the courtroom.

THE COURT: I want them to go back to central jury now.

COURT OFFICER: Follow me.

(The prospective jurors exited the courtroom)

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COURT CLERK: Remaining juror satisfactory to both sides?

MR. KESSLER: Yes.

MR. SCHECTER: Yes.

(Whereupon, one duly was duly sworn by the Clerk of the Court)

THE COURT: Fill the box, as far as you can.

COURT CLERK: Theresa Sanchez, S-a-n-c-h-e-z, seat number one. Daniel Quan, Q-u-a-n. First name Daniel. Seat three, Maria Santaromita, S-a-n-t-a-r-o-m-i-t-a, first name Maria. Marie Casimir, C-a-s-i-m-i-r. Daniel Franqui, F-r-a-n-q-u-i. Paul Hartmann, H-a-r-t-m-a-n-n, last seat.

THE COURT: Would you please, while the other jurors are answering the questions, familiarize yourself with the questionnaire.

Miss Sanchez, we will start with you.

PROSPECTIVE JUROR 1: One, 47. Two, Forest Hills. Three, manager for an insurance company. Four, divorced. Five, Bachelor of Science. Number six, my daughter is an officer manager. Seven, yes, five years ago for the grand jury. Eight, no. Nine, I have friend who are lawyers

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but none in criminal law. Ten, no. Eleven, yes, fifteen years ago my apartment was broken into. Number 12, no. Thirteen, no. Number fourteen, no. Number fifteen, no. Number sixteen, yes.

THE COURT: Thank you. Next.

PROSPECTIVE JUROR 2: Number one, 22. Two, Long Island City. Three, real estate market analyst. Four, single. Five, college graduate. Six, doesn't apply. Seven, no. Eight, no. Nine, no. Ten, no. Number eleven, yes. Number 12, no. Number thirteen, no. Fourteen, no. Fifteen, no. Sixteen, yes.

THE COURT: Next.

PROSPECTIVE JUROR 3: One, 39. Two, Middle Village. Three, paramedic lieutenant. Four, single. Five, some college. Six, doesn't apply. Seven, yes, criminal five years ago; civil seven years ago. Eight, yes. Nine, no. Ten, yes. Eleven, yes. Twelve, no. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, yes.

THE COURT: Next.

PROSPECTIVE JUROR 4: Number one, forty. Two, Rosedale, Queens. Three, room attendant. Four, married. Five, no, graduate. Number six,

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my husband works in a factory. Number seven, no. Number eight, no. Number nine, no. Number ten, no. Number eleven, no. Number 12, no. Number thirteen, no. Fourteen, no. Fifteen, yes. Number sixteen, no.

THE COURT: Thank you. Next.

PROSPECTIVE JUROR 5: One, 27. Two, Ridgewood, Queens. Three, New York City police officer. Four, single. Five, two years college. Six, I'm not married. Seven, no. Eight, yes. Nine, yes. Ten, no. Eleven, yes. Twelve, yes, myself. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, no.

THE COURT: Thank you.

PROSPECTIVE JUROR 6: One, 64. Two, Middle Village. Three, self-employed, sales agent. Four, married. Five, high school. Six, my wife is retired from the Board of Ed. One son is a computer specialist, other one is a sales representative. My daughter is a school teacher and my other daughter is an RN, nurse. Number seven, yes, two years ago, civil case. Number eight is yes. Number nine is yes. Number ten, no. Number eleven, yes, my house was broken into

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1
2 fifteen years ago. Number twelve, no. Number
3 thirteen is no. Number fourteen is yes, in the
4 army, 1954 and '54. Number fifteen, no. Number
5 sixteen, I'm not sure.

6 THE COURT: Thank you. Mr. Kessler, please?

7 MR. KESSLER: Yes, your Honor.

8 VOIR DIRE EXAMINATION

9 BY: MR. KESSLER:

10 MR. KESSLER: Afternoon. Welcome to AN
11 American Court of law. I'm Scott Kessler; I'm an
12 Assistant District Attorney. Mr. Hartmann, you
13 indicated you're not sure about being fair and
14 impartial?

15 PROSPECTIVE JUROR 6: That's right.

16 MR. KESSLER: You consider yourself a fair
17 man, generally?

18 PROSPECTIVE JUROR: Yes, I do.

19 MR. KESSLER: You obviously, as a salesman,
20 spoken to a lot of people over the years?

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. KESSLER: You make evaluations whether
23 they are telling the truth or lying?

24 PROSPECTIVE JUROR: Yes.

25 MR. KESSLER: That same ability you have

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2 then, do you think you could use it in
3 determining whether or not a witness in this case
4 is telling the truth or lying?

5 PROSPECTIVE JUROR: Possibly.

6 MR. KESSLER: At the end of this case if I
7 proved the defendant's guilt beyond a reasonable
8 doubt what would your verdict be?

9 PROSPECTIVE JUROR 6: I'm not sure. You
10 mentioned something before about the Judge will
11 explain to us what reasonable doubt is.

12 MR. KESSLER: Can you follow his
13 instructions?

14 PROSPECTIVE JUROR: Yes.

15 MR. KESSLER: If he explains reasonable doubt
16 and at the end of the case you believe that I had
17 proven this case to you based upon the evidence
18 you hear in this case, I HAVE proven it beyond a
19 reasonable doubt, okay, understand it's not a
20 hundred percent doubt or shadow of a doubt as you
21 hear on T.V. He'll tell you what it is. Any
22 problem standing up, coming in here and saying
23 he's guilty if I prove it beyond a reasonable
24 doubt as the Judge defines it?

25 PROSPECTIVE JUROR 6: No, I wouldn't.

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2 MR. KESSLER: On the other hand, at the end
3 of this case, if I fail to prove his guilt to
4 you, you don't believe he's responsible, you
5 don't believe he's guilty beyond a reasonable
6 doubt, would you be able to stand up in the
7 courtroom and say not guilty?

8 PROSPECTIVE JUROR 6: Yes, I could.

9 MR. KESSLER: So, you would decide this case
10 based upon the evidence you hear in this
11 courtroom?

12 PROSPECTIVE JUROR: To a certain degree, yes.

13 MR. KESSLER: You would use your common
14 sense?

15 PROSPECTIVE JUROR: Use common sense.

16 MR. KESSLER: Life's experiences?

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. KESSLER: So, if you could be fair to the
19 people in deciding this case based upon the
20 evidence, and if could you fair to the -- what is
21 it about the case that makes you believe you
22 couldn't be fair and impartial to both sides?

23 PROSPECTIVE JUROR: I know it's claimed or
24 it's said it's the law, that the defendant does
25 not have to take the stand.

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2 MR. KESSLER: The Judge will give you a lot
3 of instructions.

4 PROSPECTIVE JUROR: Understand that.

5 MR. KESSLER: That's one of many.

6 MR. SCHECTER: Let him finish his answer.

7 THE COURT: Yes, sustained.

8 PROSPECTIVE JUROR 6: I find it hard to
9 believe and to say that.

10 THE COURT: What do you find hard to believe?

11 PROSPECTIVE JUROR 6: That if the defendant
12 doesn't take the stand, your Honor.

13 THE COURT: I'm telling you that's the law.

14 PROSPECTIVE JUROR 6: That's the law?

15 THE COURT: I told you that in my general
16 instructions to the jury. What is so hard to
17 believe? It's written in the law books.

18 MR. KESSLER: The question is:

19 He's going to define what reasonable doubt
20 is. He'll tell you what the elements are, he.
21 Will tell you what you have to consider in the
22 case. The question is: Can you follow his
23 instructions on the law, whether you believe him
24 or don't believe him, whether you like his
25 definition or don't like his definition.

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2 Can you follow the judge's instruction on the
3 case?

4 PROSPECTIVE JUROR 6: Yes, I would.

5 MR. KESSLER: That's all it is.

6 Understandably there are a lot of people who like
7 things to be changed in the law and there are
8 ways to do that. This courtroom isn't one of
9 them, understand?

10 PROSPECTIVE JUROR: Yes.

11 MR. KESSLER: There's a legislative body that
12 determines the rules and the Judge will interpret
13 them and give them to you, but you can't change
14 the law here; it has to be done somewhere else.
15 Any problem?

16 PROSPECTIVE JUROR: No.

17 MR. KESSLER: Thanks. Miss Sanchez, hi.

18 PROSPECTIVE JUROR: High.

19 MR. KESSLER: You had indicated that you
20 would be fair and impartial in this case?

21 PROSPECTIVE JUROR: Yes.

22 MR. KESSLER: What do you think being a fair
23 and impartial juror means?

24 PROSPECTIVE JUROR: The ability to weigh the
25 evidence, or lack of evidence, and analyze it and

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1
2 make a fair determination based on that.

3 MR. KESSLER: That's probably one of the best
4 I heard so far. What about the evidence if it
5 would come solely from one person, any problem
6 convicting solely on the word of one person if
7 you believe that person to be truthful?

8 PROSPECTIVE JUROR: If I believe the person
9 to be truthful and credible I have no problem
10 with that.

11 MR. KESSLER: Okay. Mr. Quan, would you
12 agree with that?

13 PROSPECTIVE JUROR 2: Yes.

14 MR. KESSLER: You're a college grad; what
15 particular major?

16 PROSPECTIVE JUROR: Accounting and finance.

17 MR. KESSLER: So, I'm always a little
18 concerned about accounting. Everything has to
19 add up in that particular program, right?

20 PROSPECTIVE JUROR: You can play around with
21 things; however, you want to succeed.

22 MR. KESSLER: Suppose at the end of this case
23 it happens you're not a hundred percent sure but
24 you're sure beyond a reasonable doubt, would you
25 have any problem finding the defendant guilty?

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1
2 PROSPECTIVE JUROR: If you can define for me
3 what reasonable doubt is.

4 MR. KESSLER: No problem. Understand what
5 I'm saying?

6 PROSPECTIVE JUROR: I do.

7 MR. KESSLER: Nothing in life is for sure.
8 If I ask you what the last number is, can you
9 ever give me an answer?

10 PROSPECTIVE JUROR: No, I couldn't.

11 MR. KESSLER: That's a pretty straightforward
12 question. My point is: At the end of this case,
13 if I prove to you the defendant's guilt beyond a
14 reasonable doubt, would you be able to hold me to
15 that standard, no higher, no lower?

16 PROSPECTIVE JUROR: I think I could.

17 MR. KESSLER: Miss Santaromita?

18 PROSPECTIVE JUROR 3: Yes?

19 MR. KESSLER: You indicated someone you knew
20 had been accused of a crime?

21 PROSPECTIVE JUROR: It was my brother. He
22 was arrested for assault and battery.

23 MR. KESSLER: Did you follow the case at all?
24 Did you come to Court with him?

25 PROSPECTIVE JUROR 3: He pled guilty, got

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probation.

MR. KESSLER: Was he guilty?

PROSPECTIVE JUROR 3: Yes.

MR. KESSLER: Anything about that experience that would cause you not to be fair in this case?

PROSPECTIVE JUROR 3: No.

MR. KESSLER: Give the people and the defense a fair trial?

PROSPECTIVE JUROR: Yes.

MR. KESSLER: Do you have any hobbies?

PROSPECTIVE JUROR: Bowling.

MR. KESSLER: Any problem with the other concept with the one witness?

PROSPECTIVE JUROR: No.

MR. KESSLER: Can you use your common sense in deciding this case?

PROSPECTIVE JUROR: Yes.

MR. KESSLER: If i prove the defendant's guilty beyond a reasonable doubt what's your verdict?

PROSPECTIVE JUROR: Guilty.

MR. KESSLER: If I fail?

PROSPECTIVE JUROR: Not guilty.

MR. KESSLER: You indicated you couldn't be

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1
2 fair and impartial and, Mr. Franqui, you
3 indicated the same?

4 PROSPECTIVE JUROR 5: Yes.

5 PROSPECTIVE JUROR 4: Yes.

6 MR. KESSLER: Thanks for your time. I
7 appreciate everyone for their time and patience.

8 THE COURT: Mr. Schecter.

9 VOIR DIRE EXAMINATION

10 BY: MR. SCHECTER:

11 MR. SCHECTER: Afternoon everyone. I'll be
12 brief. Everyone heard everything I said up to
13 now. Anyone have any problems with any concept,
14 we have no burden? Do you have a problem with
15 that, Miss Sanchez?

16 PROSPECTIVE JUROR 1: No.

17 MR. SCHECTER: If the People's evidence is
18 lacking, any problem standing up and saying not
19 guilty?

20 PROSPECTIVE JUROR 1: No problem.

21 MR. SCHECTER: Do you?

22 PROSPECTIVE JUROR 2: Don't think I have a
23 problem.

24 MR. SCHECTER: Miss Sanchez, you sat on a
25 grand jury; how long ago was that?

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PROSPECTIVE JUROR 1: Fifteen years ago.

MR. SCHECTER: Realize there's a different standard here than in the grand jury?

PROSPECTIVE JUROR 1: Absolutely.

MR. SCHECTER: Grand jury most times you only heard one side, there's no cross-examination. Put that all aside?

PROSPECTIVE JUROR 1: Right.

MR. SCHECTER: Listen to Judge Katz?

PROSPECTIVE JUROR: Yes.

MR. SCHECTER: Anything about the type of crime that would make you feel you would side more with the prosecution?

PROSPECTIVE JUROR 1: No.

MR. SCHECTER: Thank you. Miss Santaromita?

PROSPECTIVE JUROR 3: Yes?

MR. SCHECTER: I didn't hear what you did for a living?

PROSPECTIVE JUROR 3: I'm a paramedic lieutenant for EMS, Fire Department, Bureau of EMS.

MR. SCHECTER: Do you have any dealings with police or anything with that?

PROSPECTIVE JUROR: Sure.

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1
2 MR. SCHECTER: Anything about that that would
3 make you feel you couldn't give my client a fair
4 trial?

5 PROSPECTIVE JUROR: No.

6 MR. SCHECTER: Anything about the type of
7 crime we are dealing with?

8 PROSPECTIVE JUROR 3: No.

9 MR. SCHECTER: People's prove is
10 insufficient, any problem standing up and saying
11 not guilty?

12 PROSPECTIVE JUROR 3: No.

13 MR. SCHECTER: Realize the burden is all on
14 them?

15 PROSPECTIVE JUROR 3: Yes.

16 MR. SCHECTER: Five years ago you were on a
17 jury, was that criminal?

18 PROSPECTIVE JUROR: Yes.

19 MR. SCHECTER: What type of crime was it?

20 PROSPECTIVE JUROR: Murder.

21 MR. SCHECTER: Anything happen that would not
22 make you want to go back into the jury room?

23 PROSPECTIVE JUROR 3: Well, something
24 happened. I got over it.

25 MR. SCHECTER: You can put it aside?

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1
2 PROSPECTIVE JUROR: Yes.

3 MR. SCHECTER: How long ago was the incident
4 with your brother?

5 PROSPECTIVE JUROR: About eight years ago.

6 MR. SCHECTER: You said he pled guilty.
7 Obviously certain people plead guilty, others say
8 they are not guilty and go to trial; that won't
9 effect you?

10 PROSPECTIVE JUROR: No.

11 MR. SCHECTER: You've been the victim of a
12 crime, what type of crime?

13 PROSPECTIVE JUROR: I was mugged once and my
14 car was stolen.

15 MR. SCHECTER: You won't hold it against him?

16 PROSPECTIVE JUROR: No.

17 MR. SCHECTER: Fair and impartial?

18 PROSPECTIVE JUROR: Yes.

19 MR. SCHECTER: Thank you. Mr. Franqui, how
20 long have you been a police officer?

21 PROSPECTIVE JUROR 5: Little over five years.

22 MR. SCHECTER: You said you can't be fair and
23 impartial?

24 PROSPECTIVE JUROR 5: That's correct.

25 MR. SCHECTER: Mr. Hartmann, is it the type

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1 of crime that you're having a problem with?

2 PROSPECTIVE JUROR 6: Yes, sir.

3 MR. SCHECTER: And you would prefer not to
4 sit?

5 PROSPECTIVE JUROR 6: Yes, sir.

6 MR. SCHECTER: You don't think you could give
7 my client a fair trial?

8 PROSPECTIVE JUROR 6: I made a statement that
9 my house was broken into about fifteen years ago.
10 I had two young daughters in the house about
11 fifteen and seventeen. I just want to tell you.
12 The man stood in their bedroom with a flashlight
13 on. I got up ran after the person. Only after
14 it happened to me did I realize what could have
15 happened.
16

17 MR. SCHECTER: Thank you. Nothing further.

18 (The following occurs in the robing room
19 outside the presence of the defendant and the
20 jury)

21 COURT CLERK: We have nine jurors, we need
22 three. Let's look at the first three, Sanchez
23 through Santaromita. Cause, people?

24 MR. KESSLER: None.

25 MR. SCHECTER: None.

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1 THE COURT: Peremptory, people?

2 MR. KESSLER: All fine.

3 MR. SCHECTER: Number two, Mr. Quan.

4 COURT CLERK: That's perempt number seven for
5 you. So we now have juror ten who will be
6 Sanchez. Juror eleven, Maria Santaromita. The
7 next one, Marie Casimir, cause?

8 MR. KESSLER: Cause.

9 MR. SCHECTER: Next three are going off for
10 cause.

11 THE COURT: People?

12 MR. KESSLER: Franqui, Hartmann for cause.

13 THE COURT: No objection?

14 MR. SCHECTER: No.

15 THE COURT: We have eleven jurors, your
16 Honor. We have eleven jurors.

17 THE COURT: We will get another panel at 2:00
18 o'clock.

19 (The following occurs in open Court)

20 COURT CLERK: Theresa Sanchez and Maria
21 Santormita, remain seated. Other jurors are
22 excused.

23 Would you mind stepping out in front of the
24 courtroom and we will send you to lunch in a few
25

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minutes. Remaining two jurors acceptable to the people?

MR. KESSLER: Yes.

MR. SCHECTER: Yes.

(Whereupon, 2 jurors were duly sworn by the Clerk of the Court)

THE COURT: Those sworn jurors, we have to get another panel up because we don't have enough jurors sworn. So, I'm going to ask you come back at 2:30. Don't come up to the courtroom. Go where the Court officers tell you to go. Don't discuss the case with anyone else. Don't let anyone discuss it with you or in your presence. See you at 2:30 where the court officers tells you to report. Don't come to the courtroom.

(The eleven sworn jurors exited the courtroom)

THE COURT: Same bail.

(Whereupon, a luncheon recess was taken at this time.)

* * *

AFTERNOON SESSION

* * *

(The following then occurred in open court

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out of the presence of the jury:)

COURT CLERK: Case on trial, 3282 of '95.

THE COURT: I'm going to take the sworn jurors and put them into the jury room.

Any objection?

MR. KESSLER: No.

MR. SCHECTER: No.

COURT OFFICER: Ready for the jury?

THE COURT: Yes.

THE COURT: Ladies and gentlemen of the jury, we have to select some more jurors, obviously, so I'll send you eleven back into one of the juror rooms so you don't have to listen to the whole preliminary instructions I have to give.

I hope you have some reading material or something to keep you busy. But don't forget, don't discuss the case among yourselves or let anyone discuss it in your presence. As soon as they are back bring in the other prospective jurors.

(The eleven sworn jurors exited the courtroom).

THE COURT: Now, bring in the prospective jury panel.

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COURT OFFICER: Prospective jury panel
entering the courtroom.

(The prospective jury panel entered the
courtroom)

COURT CLERK: Any objection to swearing in
the panel en mass?

MR. KESSLER: No.

MR. SCHECTER: No.

COURT CLERK: Jurors, rise, and raise your
right hands.

(Whereupon, the prospective jury panel was
duly sworn by the Clerk of the Court)

COURT CLERK: If I call your name answer
present and the officer to my left will seat you.
First seat John Mentovay. M-e-n-t-o-v-a-y,
Junior. First name John. Two, Crystal Kilgore.
K-i-l-g-o-r-e. First name, C-r-y-s-t-a-l.

A JUROR: Here.

COURT CLERK: Edward Gerke, G-e-r-k-e, Edward
first name. Edward Eng, last name, N-g, first
name, Edward. Next is Sonia Mejias, M-e-j-i-a-s.
First name, S-o-n-i-a. Dolores Sullivan,
S-u-l-l-i-v-a-n, first name D-o-l-o-r-e-s.
Carmela Kutney, K-u-t-n-e-y. First name,

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2 Carmela. Amy Pusung, P-u-s-u-n-g. First name
3 A-m-y. Lawrence Hsu, H-s-u, first name,
4 L-a-w-r-e-n-c-e. Kimberly Benton, B-e-n-t-o-n,
5 first name K-i-m-b-e-r-l-y.

6 THE COURT: Afternoon, ladies and gentlemen.

7 May name is Stanley B. Katz. I'm the
8 presiding Justice assigned to the trial of this
9 case and I intend at this time to make a
10 statement and ask you certain questions. I would
11 be very grateful for those who are in the back of
12 the courtroom as prospective jurors to pay very
13 careful attention to everything that's going on
14 because you may be called upon to sit in the jury
15 box during this term of jury selection.

16 The purpose of my inquiry is to obtain 12
17 citizens. We already got eleven jurors, we need
18 one more juror and alternates. I need one other
19 juror and alternates in order to have them sit on
20 this jury and that these jurors will be jurors
21 who act fairly and without prejudice of any kind.

22 Now, it's a grave obligation on your part to
23 respond to the questions that are directed to you
24 and to answer them fully, candidly, and
25 truthfully. There's no right or wrong answers to

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any of the questions that are asked of you, only truthful answer.

This is the trial of a criminal case and every person appearing before this Court is entitled to and must receive a fair and impartial trial. This impartiality, this lack of bias must be accorded in equal measure, both to the people and to the defendant. The case involves the trial of criminal charges brought by the People of the State of New York against the defendant, Hai quang Zheng. The charges against the defendant are contained in an indictment which alleges that the defendant committed certain criminal acts, and they are four counts of kidnapping in the first degree, two counts of rape in the first degree, kidnapping in the second degree, sexual abuse in the first degree, criminal possession of a weapon in the second degree.

The indictment, ladies and gentlemen, is merely the instrument by which the state of New York brings into Court individuals it claims to have violated the law. The prosecution conducted against the defendant for the alleged commission

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2 of a crime is brought in the name of the People
3 of the State of New York. The indictment is not
4 evidence of the guilt of defendant; indeed, the
5 defendant is presumed to be innocent. This
6 presumption of innocence continues throughout the
7 trial unless and until the jury, having
8 considered all of the evidence, shall find the
9 defendant is guilty beyond a reasonable doubt of
10 the charges made against him.

11 The jury decides questions of fact. The jury
12 listens to the testimony, examines the evidence
13 which is received during the course of the trial.
14 At the conclusion of the trial, it's my province,
15 as the Judge, to instruct the jury as to the law
16 which is applicable to this case and the jury is
17 bound to follow my instructions as to the law,
18 whether you agree the law or not.

19 The jury is the exclusive judges of the fact.
20 It alone determines whether the people have
21 proved the charges with respect to this defendant
22 beyond a reasonable doubt. So, it will be the
23 duty of the jury to weigh the evidence calmly and
24 dispassionately without any sympathy or bias or
25 prejudice, and if the jury returns a verdict of

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conviction against the defendant, it has nothing to do with sentence or punishment to be imposed. That's my obligation.

You just heard me use the words beyond a reasonable doubt. It must come to your mind what do we mean by reasonable doubt? There's nothing mysterious about these words because implicit in them is their own meaning. It means exactly what the words themselves imply. A reasonable doubt is a doubt based upon reason; it's a doubt for which a juror can give a reason if he or she is called upon to do so in the jury room. It's a doubt based upon the evidence or lack of evidence in the case. A reasonable doubt has been called an actual doubt. It's something which after going over all the evidence in your mind you have a conscious -- you are conscious of having a doubt after going over all the testimony and giving it all of your consideration. If you then feel uncertain and not fully convinced that the defendant is guilty and if you believe a reasonable person would hesitate to act because of such a doubt, then that's a reasonable doubt and the defendant is entitled to its benefit and

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2 a verdict of not guilty with respect to the crime
3 you may be deliberating on. This doesn't mean
4 that a reasonable doubt may be predicated upon
5 some type of whim or guess or conjecture or
6 surmise on the part of a juror. Nor should it be
7 considered or used as some type of a shield
8 behind which a juror might wish to hide in order
9 doing a disagreeable duty. There's no obligation
10 on the part of the people to establish the
11 elements of a crime for which a defendant may be
12 charged beyond any or all doubt or to a
13 mathematical certainty, because you can't get
14 that degree of proof in human affairs.

15 I also call to your attention that under the
16 law a defendant is presumed to be innocent. That
17 presumption rests with him throughout this trial.
18 He's cloaked with the protection of this
19 presumption even when you go into the jury room
20 to start your deliberations. It remains with him
21 until that moment arrives when you, as jurors,
22 are convinced from the proof submitted by the
23 people that he is guilty of the crime or crimes
24 with which he's being charged beyond a reasonable
25 doubt.

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2 When that point is reached the presumption of
3 innocence is destroyed and no longer exists.
4 This, therefore, places the burden of adducing
5 such evidence upon the people. Also, the people
6 must establish every element of the crime with
7 which the defendant is charged to your
8 satisfaction beyond a reasonable doubt. The
9 defendant is entitled to the benefit of every
10 reasonable doubt arising out of the evidence in
11 the case, or the lack of evidence in the case.

12 A the defendant doesn't have to prove
13 anything. He's not required to take the stand
14 and testify on his own behalf. If he does not
15 testify that doesn't create any presumption or
16 inference that may be used against him.

17 Further, the defendant does not have to call
18 any witness. As to those of you who may be
19 challenged by counsel for the defendant or the
20 prosecution, please be advised that the counsel
21 for the respective parties have a right to
22 challenge a prospective juror for cause, that is,
23 either counsel may be of the opinion that a
24 particular juror is not qualified for or is
25 disqualified by reason of some fact which may

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effect their fairness as a trial juror.

In addition, the attorneys for the parties have an absolute right to excuse a juror for an arbitrary reason; that's called a peremptory challenge. Should you be challenged by either attorneys do not consider that as a reflection upon your integrity, intelligence or capacity to serve as a juror. All it means in this particular case is they feel you would not be a proper juror.

From time to time during the course of the trial there will be interruptions by counsel which are perfectly proper, as there are matters to be discussed between counsel and Court which shouldn't be heard by the jury.

For that reason we will have what we call side bars. The attorneys will step up here. You'll know we are discussing legal matters which should not be properly discussed before the jury. A fair trial must start with a fair jury and to be fair you must come to this jury box without any preconceived reservations or notions. This examination may bring back to your minds some experience or relationship that might affect your

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1
2 fair determination of this case. A fair
3 determination is one based upon all of the
4 evidence in the case, free of bias, prejudice or
5 sympathy and in accordance with the applicable
6 law as I will give it to you.

7 Now, at this point before counsel and I ask
8 you some questions I would like to read section
9 260.30 of the Criminal Procedure Law so as to
10 familiarize you with the order of procedure in a
11 criminal case.

12 260.30 reads as follows: The order of a jury
13 trial is as follows:

14 One: The jury must be selected and sworn.

15 Two: The Court must deliver preliminary
16 instructions to the jury.

17 Three: The people must deliver an opening
18 address to the jury.

19 Four: The defendant may deliver an opening
20 address to the jury.

21 Five: The people must offer evidence in
22 support of the indictment.

23 Six: The defendant may offer evidence in his
24 defense.

25 Seven: The People may offer evidence in

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1 rebuttal of the defense evidence and the
2 defendant may then offer evidence in rebuttal of
3 the People's rebuttal evidence.
4

5 The Court, in its discretion, may permit the
6 parties to offer further rebuttal or surrebuttal
7 evidence in this pattern.

8 In the interest of justice the Court may
9 permit either party to offer evidence upon
10 rebuttal which is not technically of a rebuttal
11 nature but more properly a part of the offering
12 party's original case.

13 Eight: At the conclusion of the evidence the
14 defendant may deliver a summation to the jury.

15 And, nine: The people may then deliver a
16 summation to the jury.

17 Ten: The Court must deliver a charge to the
18 jury.

19 And, eleven: The jury must then retire and,
20 if possible, render a verdict.

21 Answer the following questions candidly and
22 directly. Do any of you, ladies and gentlemen,
23 have any reservations about being able to follow
24 the instructions as I've just enunciated? I
25 mentioned to you the defendant in this case is

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1
2 Hai Guang Zhen. Would you stand up and face the
3 prospective jurors?

4 Do any of you, ladies and gentlemen, know the
5 defendant? Have you ever seen him before or
6 heard of him before? Doesn't appear that anyone
7 has.

8 Now the attorney for the defendant is
9 Mr. Donald Schechter. Would you please face the
10 jurors?

11 MR. SCHECTER: Afternoon.

12 THE COURT: Do any of you know him or seen or
13 heard of him before?

14 Now, the District Attorney of Queens County
15 is Richard A. Brown. I imagine many of you may
16 have heard of him or seen his picture in the
17 paper or television. Have any of you ever had
18 any professional or personal or social or
19 business dealings at all with Mr. Brown? Doesn't
20 appear that anyone has.

21 The Assistant District Attorney who will
22 actually present this case is Mr. Scott Kessler.
23 Mr. Kessler, would you please face the jury?

24 MR. KESSLER: Afternoon.

25 THE COURT: Do any of you, ladies and

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gentlemen, know of him? Ever seen or heard of Mr. Kessler before? Doesn't appear anyone has.

I'll read some name to you who may be witnesses. Please listen to these names so when I ask you if you ever heard of them or you think you may know them you'll be able to answer.

Guo Bang Liu; Jin Hao Liu; Liu Yan Wu; Jin Zhu Liu; Detective Henry Lee; detective Keith Ng; Detective Steve Banks; Detective Michael Greene; Chemist Tom Hickey; Police Officer, Kevin Streine; Doctor John Kurtz and Detective Matt Murphy?

Any of you every heard of or know these people? Now, I should note that the fact that this action is brought in the name of the People of the State of New York doesn't -- that the evidence is presented by a publish official, doesn't indicate in any way that the people of this state want any specific verdict.

The people of this state are served by whatever verdict is justified by the evidence.

Now, ladies and gentlemen, in the box, you've received a questionnaire. I would appreciate it if all of you, while the other prospective jurors

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1
2 are answering these questions, study this
3 questionnaire so when it comes to your turn you
4 will know what the questions are and you'll be
5 able to answer them in an expeditious manner.

6 The first six questions require a specific
7 answer. After that it's appropriate to answer
8 yes or no. We will start with you, sir.

9 Would you please answer those questions?
10 Give us the number of the question and the
11 answer. We have copies of this, the attorneys
12 and myself, so we know what the questions are.
13 All you have to say is, one, and the answer to
14 the question in the order that they are on the
15 paper.

16 PROSPECTIVE JUROR 1: Can I stay seated?

17 THE COURT: Yes, relax. As I tell all
18 jurors, there's no jury school. Nobody knows how
19 to be a juror, none of us. So, we just go along
20 and answer the questions and we will determine
21 whether you can be a fair juror. Go ahead.

22 PROSPECTIVE JUROR 1: One, 32. Two, Kew
23 Gardens Hills. Three, boilerman. Four, married.
24 Five, six months of college. Six, my wife and
25 children stay home. Seven, yes. I was on a

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1
2 civil case. Eight, I have friends in law
3 enforcement.

4 THE COURT: Just answer yes or no.

5 PROSPECTIVE JUROR 1: Nine, no. Ten, no.
6 Eleven, yes. Twelve, no. Thirteen, no.
7 Fourteen, no. Fifteen, no. Sixteen, no.

8 THE COURT: Thank you. Next.

9 PROSPECTIVE JUROR 2: Number one, 49 years.
10 Two, Forest Hills, New York. Three, telephone
11 operator. Four, married, 54 years. Six, I have
12 no adult children. My husband is a co-owner of a
13 restaurant. Number seven, no. Eight, no. Nine,
14 no. Ten, yes. Eleven, yes. Twelve, no.
15 Thirteen, no. Fourteen, no. Fifteen, yes.
16 Sixteen, yes.

17 THE COURT: Thank you..

18 PROSPECTIVE JUROR 3: Number one, 32 years.
19 Two, Auburndale, New York. Three, payroll.
20 Four, married. Five, college graduate. Number
21 six, spouse is a recruiting specialist. Have no
22 children. Seven is no. Eight is yes. No is
23 nine. Ten is no. Eleven, yes. Twelve, no.
24 Thirteen is no. Fourteen is no. Fifteen, no.
25 Sixteen, yes.

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THE COURT: Next, please.

PROSPECTIVE JUROR 4: One, 21. Two, Kew Garden Hills. Three, accountant. Four, no, single. Five, college degree. Six, no. Seven, no. Eight, yes. Nine, no. Ten, no. Eleven, yes. Twelve, no. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, no.

PROSPECTIVE JUROR 5: Number one, 42. Far Rockaway, Queens. Three, medical assistant. Four, married. Five, high school. Six, my husband works for Merrill Lynch. My children go to school. Number seven, no. Number eight, yes. Number nine, no. Number ten, yes. Number eleven, no. Number twelve, no. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, yes.

PROSPECTIVE JUROR 6: Number one, 55. Two, Kew Gardens. Three, administrative assistance. Four, divorced. Five, one year college. Six, one son works in an office, one son is working on his PhD. Seven, yes, I was on a jury twice.

THE COURT: When was that and what type of case?

PROSPECTIVE JUROR 6: Ten years ago. One was a homicide case. Five years ago it was

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possession of a weapon.

THE COURT: Thank you.

PROSPECTIVE JUROR 6: Number eight, yes.

Nine, yes. Ten, no. Eleven, yes. Twelve, yes.

Thirteen, no. Fourteen, no. Fifteen, no.

Sixteen, yes.

THE COURT: Thank you.

PROSPECTIVE JUROR 7: I'm 53 years old.

THE COURT: Just give us the number of the question first.

PROSPECTIVE JUROR 7: One, 53. Two, Rockaway, Queens. Three, I'm an executive assistance. Four, I'm married. Five, twelve years of school. Six, my husband is a car inspector for the New York Transit Authority. Son is a probation officer and my daughter is a legal secretary. Seven, no. Eight, yes. Nine, no. Ten, no. Eleven, no. Twelve, no. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, yes.

THE COURT: Thank you. Next.

PROSPECTIVE JUROR 8: Number one, 36 years old. Two, Astoria, New York. Book keeper. Four, married. I have four years. Bachelor

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degree. Six, store manager. Seven, no. Eight, no. Nine, no. Ten, no. Number, eleven no. Number twelve, no. Number thirteen, no. Number fourteen, no. Number fifteen, no. Number sixteen, yes.

PROSPECTIVE JUROR 9: Number one, 42. Two, Fresh Meadows. Three, financial consultant. Four, married. Five, graduate school, MBA. Number six, my wife works with a computer parts company. Children go to school. Number seven, no. Eight, no. Nine, no. Number ten, no. Eleven, yes. Twelve, no. Thirteen, no. Fourteen, no. Fifteen, no. Sixteen, yes.

PROSPECTIVE JUROR 10: Number one, 31. Two, Richmond Hill. Three, I'm an art director for a children's clothing manufacturer. Four, divorced. Five, college graduate. Six, no spouse, no children. Seven, yes, about five years ago, criminal case. Number eight, yes. Nine, no. Ten, no. Eleven, yes. Twelve, no. Number thirteen, no. Fourteen, no. Fifteen, no. Sixteen, yes.

THE COURT: Thank U.

EXAMINATION BY

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MR. KESSLER:

MR. KESSLER: Afternoon everyone. Welcome to an American Court of law. My name is Scott Kessler and I'm an Assistant District Attorney I work for Richard Brown who's the Assistant District Attorney of Queens County.

I'll be asking you some questions. At any time you don't understand any of my questions just let me know and I'll rephrase it.

You were the lucky one to get your name selected first. I'll start with you, Mr. Mentovay. You indicated to the Judge that you work as a boiler operator?

PROSPECTIVE JUROR 1: Yes, boiler maintenance.

MR. KESSLER: You're married? Any kids?

PROSPECTIVE JUROR 1: Yes. I have a son four years old.

MR. KESSLER: Do you consider yourself a fair person?

PROSPECTIVE JUROR 1: Yes, fair.

MR. KESSLER: You had indicated that you can't be fair and impartial in this case?

PROSPECTIVE JUROR 1: Um, my -- I have a

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1
2 younger sister that was molested when I was
3 really young. I don't know if that would have
4 any effect or not.

5 MR. KESSLER: The question I guess is this:

6 People have had things happen to them in
7 their past lives. Obviously no one particularly
8 likes to hear about rape or kidnaping. We are
9 trying to find twelve jurors who are fair for the
10 people and fair for the defense. Bottom line is
11 if I proved the defendant's guilt beyond a
12 reasonable doubt what would your verdict be?

13 PROSPECTIVE JUROR 1: Well, if all the
14 evidence -- if it was convincing enough to me I
15 would make a fair decision.

16 MR. KESSLER: Let's suppose you decided I've
17 convinced you beyond a reasonable doubt that the
18 defendant is guilty, what is your verdict?

19 PROSPECTIVE JUROR 1: Beyond a reasonable
20 doubt that he's guilty, then he'd be guilty then.

21 MR. KESSLER: If I fail to prove his guilt
22 beyond a reasonable doubt?

23 PROSPECTIVE JUROR: Then he's not.

24 MR. KESSLER: Okay. Do you think you could
25 do that?

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1
2 PROSPECTIVE JUROR: Yeah.

3 MR. KESSLER: Now, you mentioned about your
4 sister who had been -- or someone you said had
5 had a contact with sexual abuse of some kind?

6 PROSPECTIVE JUROR 1: Right.

7 MR. KESSLER: I guess the concern we have is,
8 can you put that aside and decide this case
9 fairly and impartially based on the evidence you
10 hear?

11 PROSPECTIVE JUROR: Yes. It was a long time
12 ago.

13 MR. KESSLER: Okay. Mr. Ng, how are you?

14 PROSPECTIVE JUROR 4: Fine.

15 MR. KESSLER: You're an accountant?

16 PROSPECTIVE JUROR 4: Yes.

17 MR. KESSLER: You have a college degree?

18 PROSPECTIVE JUROR: Uh-hum.

19 MR. KESSLER: And you consider yourself a
20 fair person?

21 PROSPECTIVE JUROR 4: I think so, yes.

22 MR. KESSLER: Good common sense?

23 PROSPECTIVE JUROR: Yes.

24 MR. KESSLER: One of the things we need is a
25 verbal response. What about at the end of this

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1
2 case I prove the defendant's guilt beyond a
3 reasonable doubt, what's your verdict?

4 PROSPECTIVE JUROR 4: Guilty.

5 MR. KESSLER: If I fail to prove his guilt
6 beyond a reasonable doubt?

7 PROSPECTIVE JUROR 4: Not guilty.

8 MR. KESSLER: Okay. So will you decide this
9 case on the facts as you hear it in the
10 courtroom?

11 PROSPECTIVE JUROR 4: Yes.

12 MR. KESSLER: You indicated you couldn't be
13 fair and impartial to question sixteen?

14 PROSPECTIVE JUROR 4: I don't know if I can
15 be fair or impartial. I've never been a juror so
16 it's hard for me to say if I can or not.

17 MR. KESSLER: There's no jury school. You
18 didn't go anywhere before coming into this
19 courtroom. Only thing you need to be a juror is
20 to bring your common sense and decide this case
21 fairly for both sides.

22 If I prove his guilt can you stand up and say
23 guilty? If I fail to prove his guilt, stand up
24 and say not guilty? Now, let's go back to
25 question number sixteen. Can you be fair and

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impartial on this case knowing that?

PROSPECTIVE JUROR 4: Yes.

MR. KESSLER: Miss Mejias, how are you?

PROSPECTIVE JUROR 5: Good.

MR. KESSLER: You answered one of the questions you knew someone who had been accused of a crime?

PROSPECTIVE JUROR 5: Yes.

MR. KESSLER: Want to talk about it in public or private?

PROSPECTIVE JUROR 5: Side bar.

MR. KESSLER: Sure.

THE COURT: Step up.

(Discussion held at bench off the record)

MR. KESSLER: Mr. Hs, how are you?

PROSPECTIVE JUROR 9: Good.

MR. KESSLER: How is financial consulting?

PROSPECTIVE JUROR 9: Yeah, you know, in this life it's not easy.

MR. KESSLER: Tough times?

PROSPECTIVE JUROR: Yes.

MR. KESSLER: You're doing that type of work for how long?

PROSPECTIVE JUROR 9: Ten years.

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1
2 MR. KESSLER: Do you have a degree in
3 accounting or any background like that?

4 PROSPECTIVE JUROR 9: RUTC --

5 MR. KESSLER: Unfortunately the Court
6 Reporter has to hear you. You have a degree in
7 insurance?

8 PROSPECTIVE JUROR: It's like a title, like a
9 specialty. You have to take like two year other
10 course and get and pass this test and get this
11 title.

12 MR. KESSLER: Have you ever served on a jury
13 before?

14 PROSPECTIVE JUROR: No.

15 MR. KESSLER: Have you ever seen a trial
16 before?

17 PROSPECTIVE JUROR: No.

18 MR. KESSLER: What about on T.V.?

19 PROSPECTIVE JUROR: Yeah part of.

20 MR. KESSLER: Do you think can be fair and
21 impartial to both sides?

22 PROSPECTIVE JUROR: Yes, I think so.

23 MR. KESSLER: What do you think it means to
24 be fair and impartial to both sides being a juror
25 on a case like this?

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1
2 PROSPECTIVE JUROR: I think each side have to
3 enough like evidence and to prove the other party
4 is guilty or innocent. (sic)

5 MR. KESSLER: If I prove the defendant's
6 guilt based upon the evidence you hear what's
7 your verdict?

8 PROSPECTIVE JUROR: If you can prove enough
9 evidence and my choice will be guilty.

10 MR. KESSLER: Let's talk about enough
11 evidence. Suppose, Mr. Hsu, I put a witness on
12 the stand and you believe that witness to be
13 truthful and credible and I prove everything I
14 have to through that witness beyond a reasonable
15 doubt, do you have any problem walking into a
16 courtroom and finding somebody guilty based
17 solely on the word of one witness?

18 PROSPECTIVE JUROR 9: Big problem because I
19 can't quite understand the last part. Repeat.

20 MR. KESSLER: Sure. Suppose a witness comes
21 into this courtroom and testifies and you believe
22 that witness to be truthful and credible about
23 the events that took place in that witness's
24 life. And through that witness I prove
25 everything I have to, the defendant's guilt

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1
2 beyond a reasonable doubt, can you convict the
3 defendant based solely on the testimony of one
4 witness or do you need more evidence?

5 PROSPECTIVE JUROR 9: Probably I need both
6 sides as evidence and combine together.

7 MR. KESSLER: What do you mean by evidence?

8 PROSPECTIVE JUROR: It's any -- the right --
9 don't like facts of some evidence. Can really
10 believe whether the witness is true because
11 humans make mistakes. (sic)

12 MR. KESSLER: Do you agree with that?

13 PROSPECTIVE JUROR 10: Didn't understand
14 that.

15 MR. KESSLER: The question

16 Is: If I put a witness on the stand and you
17 believe that witness to be truthful and honest
18 and credible and I prove everything that I have
19 to in this case, do you have any problem
20 convicting the defendant solely on the testimony
21 of that one witness?

22 PROSPECTIVE JUROR 10: Yes.

23 MR. KESSLER: Why is that?

24 PROSPECTIVE JUROR: People lie. I need to
25 hear more than one person corroborate the story.

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1
2 MR. KESSLER: Let's talk about rape. Do you
3 think rapes are committed in front of a lot of
4 people?

5 PROSPECTIVE JUROR: No.

6 MR. KESSLER: Sometimes robberies aren't
7 either.

8 PROSPECTIVE JUROR: Yes.

9 MR. KESSLER: For example, if you're walking
10 down a street, a person steals your bag and
11 points a gun, the next day you see that person,
12 would you call the police?

13 PROSPECTIVE JUROR: Yes.

14 MR. KESSLER: Would you expect the police to
15 arrest him?

16 PROSPECTIVE JUROR: Yes.

17 MR. KESSLER: Would you expect my office to
18 prosecute the case?

19 PROSPECTIVE JUROR: Yes.

20 MR. KESSLER: You'd be the only witness on
21 that case, wouldn't you?

22 PROSPECTIVE JUROR: Uh-hum.

23 MR. KESSLER: Do you have any problem with a
24 jury convicting based upon your word, you would
25 want them to do that?

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1
2 PROSPECTIVE JUROR: Yes, I would.

3 MR. KESSLER: So, how about the reverse now
4 for you. Do you have any problem if a woman
5 comes in here and tells you I was raped and you
6 believe that woman and I was kidnaped, do you
7 have any problem convicting on her word alone?

8 PROSPECTIVE JUROR: I think I would still
9 need to have some other evidence. I guess it
10 would depend on what the case was and what I
11 heard from listening to the case and the
12 credibility of the person on the stand.

13 MR. KESSLER: Only thing I could tell you --
14 I can't tell you what she's going to say. At the
15 end of case you believe her to be truthful and
16 credible, can you convict based upon her word
17 alone?

18 THE COURT: If you believe the witness and
19 through that witness he proves everything that
20 he's required to prove, would you be able to
21 convicted based upon that testimony?

22 PROSPECTIVE JUROR 10: Yes.

23 MR. KESSLER: That's all. It's no special --
24 in fact, that's the law. The law doesn't require
25 to put more than one witness. Some people say I

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1
2 need additional proof other than one witness.

3 My question is, if you were that kind of
4 person or can you convict on one person?

5 PROSPECTIVE JUROR 10: Yes.

6 MR. KESSLER: How about you, Mr. Gerke,
7 understand my point?

8 PROSPECTIVE JUROR 3: To convict based on
9 one? I always thought a trial you had to hear
10 every witness -- here every witness and see every
11 exhibit of evidence to make a proper verdict.

12 THE COURT: He's asking you a hypothetical
13 question.

14 MR. KESSLER: My question simply is if you're
15 chosen as a juror and only one witness testifies
16 in this case, you believe that witness to be
17 truthful and credible, can you convict based
18 solely on that testimony alone or are you the
19 type of person that needs additional evidence or
20 people?

21 PROSPECTIVE JUROR 3: Say if you only had the
22 one witness, it was credible, I guess I'd say,
23 yes.

24 MR. KESSLER: Does that seem fair to you,
25 Mr. Ng?

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1
2 PROSPECTIVE JUROR 4: Yes.

3 MR. KESSLER: How about you?

4 PROSPECTIVE JUROR 5: Yes.

5 MR. KESSLER: Do you agree rapes aren't
6 committed in front of a lot of people?

7 PROSPECTIVE JUROR 5: Yes.

8 MR. KESSLER: Do you have a problem
9 convicting on one witness if you believe that
10 witness?

11 PROSPECTIVE JUROR 5: No.

12 MR. KESSLER: I'm saying the witness comes in
13 and it's some kind of drunken bum and you can't
14 believe, obviously, I'm not saying you should
15 convict based on that witness. You have to look
16 at that witness and determine whether they are
17 truthful.

18 PROSPECTIVE JUROR 5: No problem.

19 MR. KESSLER: Miss Sullivan, how about you?

20 PROSPECTIVE JUROR 6: Yes, I can convict.

21 MR. KESSLER: You have to look at the person
22 and see what they have to say and listen to what
23 they have to say. But understand, Miss Sullivan,
24 there's people out there who say, for some
25 reason, religious, maybe it's philosophical, and

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1
2 say I need more than one witness, there's nothing
3 wrong with it. But that's not the law. I need
4 to know if you can follow the law and if I prove
5 the defendant's guilt through one witness whether
6 you can return a verdict of guilty and I proved
7 it beyond a reasonable doubt?

8 PROSPECTIVE JUROR 6: Yes.

9 MR. KESSLER: Miss Kutney?

10 PROSPECTIVE JUROR 7: Yes.

11 MR. KESSLER: How about you any problem?

12 PROSPECTIVE JUROR 7: No.

13 MR. KESSLER: And Miss Pusung?

14 PROSPECTIVE JUROR 8: No problem.

15 MR. KESSLER: Great. Miss Benton, I want to
16 ask you about art directing for children's
17 clothing. You direct the type of art work that's
18 on the clothing?

19 PROSPECTIVE JUROR 10: I work for Looney
20 Tunes and I direct the other artists how to place
21 the art work.

22 MR. KESSLER: Enjoy your work?

23 PROSPECTIVE JUROR: Yes.

24 MR. KESSLER: Spare time?

25 PROSPECTIVE JUROR: I don't have very much

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1
2 spare time.

3 MR. KESSLER: Mr. Hsu, I'm going back to you
4 now. I've been talking to other juror members.
5 Do you still have that problem with one witness?

6 PROSPECTIVE JUROR 9: If you only have one,
7 like you just mentioned, we can listen to what he
8 say and what evidence we got and we make some
9 decision.

10 MR. KESSLER: Great. Mr. Hsu, the Judge told
11 you about beyond a reasonable doubt, that's the
12 burden of proof, did you listen when he was
13 talking about that?

14 PROSPECTIVE JUROR 9: Yes.

15 MR. KESSLER: Understand that sometimes in
16 accounting and financial consultants everything
17 has to be exact. In this case the burden of
18 proof is not to a hundred percent certainty but
19 beyond a reasonable doubt; do you understand
20 that?

21 PROSPECTIVE JUROR: Understand.

22 MR. KESSLER: So, if at the end of this case
23 you're not a hundred percent sure but you're sure
24 beyond a reasonable doubt, what's your verdict?

25 PROSPECTIVE JUROR 9: I would base on my life

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2 experience, my working experience and my
3 education to make my decision.

4 MR. KESSLER: How are you?

5 PROSPECTIVE JUROR 2: Fine.

6 MR. KESSLER: You indicated you knew someone
7 who was accused of a crime?

8 PROSPECTIVE JUROR 2: Yes.

9 MR. KESSLER: Would you prefer to talk here
10 or talk in private?

11 PROSPECTIVE JUROR 2: Side bar.

12 THE COURT: Step up.

13 (Discussion held at bench off the record)
14 had.

15 MR. KESSLER: Miss Kutney, executive
16 assistant, what type of work?

17 PROSPECTIVE JUROR 7: Finance department.

18 MR. KESSLER: How long have you been doing
19 that?

20 PROSPECTIVE JUROR: Ten years.

21 MR. KESSLER: What did you do before that?

22 PROSPECTIVE JUROR: I was an administrative
23 assistant at Madison Square Garden.

24 MR. KESSLER: How long did you do that?

25 PROSPECTIVE JUROR 7: Two years. I

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transferred from Paramount.

MR. KESSLER: Miss Sullivan, you were also an administrative assistant?

PROSPECTIVE JUROR 6: It's a financial services group.

MR. KESSLER: How long have you been doing that type of work?

PROSPECTIVE JUROR 6: Five years.

MR. KESSLER: Any work before that?

PROSPECTIVE JUROR: Yes. I was administrative assistant in the British importing company.

MR. KESSLER: How long did you work there?

PROSPECTIVE JUROR: Five years.

MR. KESSLER: Any reason why you can't be fair and impartial in this case?

PROSPECTIVE JUROR 6: No.

MR. KESSLER: A little hesitation, nervous of the charges involved here?

PROSPECTIVE JUROR 6: Yeah.

MR. KESSLER: Who wouldn't be, right? Obviously we are not looking for you to say to yourself rape or kidnaping doesn't effect me at all. My question is:

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Can you give both the people and the defendant a fair trial and decide this case on the facts?

THE COURT: You were a previous juror on a homicide case?

PROSPECTIVE JUROR 6: Yes.

MR. KESSLER: Anything about being on a jury before that would cause you to believe it was a bad experience, I could never do it again?

PROSPECTIVE JUROR 6: It wasn't enjoyable.

MR. KESSLER: But you managed through it?

PROSPECTIVE JUROR 6: (No response)

MR. KESSLER: Thanks. I think I have spoken to everyone. I would just ask everyone here if they are chosen as the last jurors in this case -- by the way, twelve jurors' vote counts as much as anybody else's. Right now we have eleven jurors. If you are chosen as a juror, that you be fair and impartial to both the People of the State of New York and the defendant. That means if I prove the defendant's guilt beyond a reasonable doubt can everyone assure me they can return a verdict of guilty? And if I fail to prove his guilt beyond a reasonable doubt can you

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2 assure me to return a verdict of not guilty?
3 That's all I ask. Base your decision not on
4 sympathy toward anyone or prejudice against
5 anyone. Decide it on the facts and make your
6 determination based upon the facts alone.

7 Okay. Seem fair to everyone? Thanks very
8 much. Thank you, your Honor.

9 THE COURT: Mr. Schechter, your turn.

10 EXAMINATION BY

11 MR. SCHECTER:

12 MR. SCHECTER: Afternoon everyone. My name
13 is Donald Schechter and I represent Mr. Zheng
14 who's accused of these crimes.

15 Now, first let me ask each and every one of
16 you. The Judge read to you, or he didn't read to
17 you, he said that Mr. Zheng has been indicted by
18 a grand jury of Queens County. Anyone ever sat
19 on a grand jury here? Anyone feel because he's
20 accused of these, crimes, that's all they are is
21 accusations, that he must have done something
22 wrong?

23 Anyone feel that the type of crimes we are
24 dealing with -- we heard allegations of
25 kidnaping, rape, sexual abuse -- anyone feel that

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2 in and of itself makes them feel they could not
3 give Mr. Zheng a fair trial?

4 Miss Sullivan, you said when you were
5 mentioning about the type of crime that we are
6 dealing here with, I have to assume that some
7 woman is going to take the stand and say that my
8 client did something to her of a sexual nature.

9 Because of that fact, and that fact alone,
10 would you feel to tend to side with the woman and
11 give her more credibility because of that, the
12 nature and the type of crime?

13 PROSPECTIVE JUROR 6: No. I would listen to
14 whatever she had to say.

15 MR. SCHECTER: And you'd be fair and
16 impartial?

17 PROSPECTIVE JUROR 6: I hope so.

18 MR. SCHECTER: You would listen to the
19 evidence or lack of evidence and make your
20 determination based on that?

21 PROSPECTIVE JUROR 6: Yes.

22 MR. SCHECTER: Anyone feel that because of
23 the type of crime -- Miss Benton, do you feel
24 that you would side more with the woman if she
25 came in here and said my client did something to

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her?

PROSPECTIVE JUROR 10: No.

MR. SCHECTER: What about you?

PROSPECTIVE JUROR 8: No.

MR. SCHECTER: Now, the Judge was telling you a little bit about burden of proof, beyond a reasonable doubt. We, the defense, don't have any burden whatsoever. The burden is always on the prosecution. And, as such, the prosecution has to prove my client's guilt beyond a reasonable doubt. And that's why your verdict will be guilty or not guilty, not guilty or innocent because we don't have to prove him innocent. They have to prove him guilty.

Anyone have a problem with that concept? And going with that, we don't have to call any witnesses, nothing says that Mr. Zheng has to take the witness stand on this case. And the Judge will instruct you at the end, and he told you you can't hold it against him.

Mr. Hsu, okay, you said you would listen to everything and you would want to hear both sides, if I'm not mistaken?

PROSPECTIVE JUROR: Yes.

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2 MR. SCHECTER: Now, in the criminal justice
3 system there's no burden on my client to take the
4 witness stand or call any witnesses. So you may
5 only hear one side. Would that affect your
6 deliberations?

7 PROSPECTIVE JUROR 9: I think the defense
8 attorney will tell something.

9 MR. SCHECTER: Excuse me?

10 PROSPECTIVE JUROR: You are defense attorney,
11 you will tell us something.

12 MR. SCHECTER: If we don't call any witnesses
13 will you hold it against my client if he doesn't
14 take the stand?

15 PROSPECTIVE JUROR: Like I just mentioned,
16 the defense attorney will have some argument and
17 always have some explanation like his client.

18 MR. SCHECTER: I don't need any explanation
19 for him not taking the witness stand. Will you
20 hold it against him if he doesn't take the stand?
21 Nothing what I do or my examination of any of the
22 witnesses -- I'm asking you, if we don't call any
23 witness or if he doesn't take the stand would you
24 hold that against him?

25 PROSPECTIVE JUROR: I think I will take like

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witness what he says. (sic)

MR. SCHECTER: I'm not talking about the witnesses that testify. I'm talking about if we don't call any witnesses, and I don't know whether or not he will take the stand or not, will you hold it against him?

PROSPECTIVE JUROR: Yes.

MR. SCHECTER: Thank you. Miss Kutney, will you hold that against him if he doesn't take the witness stand?

PROSPECTIVE JUROR 7: Yes.

MR. SCHECTER: Miss Sullivan?

PROSPECTIVE JUROR 6: No.

MR. SCHECTER: Mr. Gerke?

PROSPECTIVE JUROR 3: No.

MR. SCHECTER: Miss Kilgore?

PROSPECTIVE JUROR 2: No.

MR. SCHECTER: Miss Pusung?

PROSPECTIVE JUROR 8: No.

MR. SCHECTER: Mr. Mentovay?

PROSPECTIVE JUROR 1: Yes.

MR. SCHECTER: You said there was an incident with your sister?

PROSPECTIVE JUROR 1: Uh-hum.

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2 MR. SCHECTER: Now, a witness is going to
3 take this witness stand and say certain
4 allegations against my client.

5 Would you side with that witness if she
6 alleges that my client raped her because of what
7 happened to your sister?

8 PROSPECTIVE JUROR 1: No.

9 MR. SCHECTER: You said that you could not be
10 fair and impartial at one time?

11 PROSPECTIVE JUROR 1: I didn't really think
12 about the question then.

13 MR. SCHECTER: Now that you've thought about
14 it can you be fair and impartial?

15 PROSPECTIVE JUROR 1: Yes.

16 MR. SCHECTER: No matter what happened to
17 your sister that will not affect your
18 deliberations?

19 PROSPECTIVE JUROR 1: No.

20 MR. SCHECTER: And if my client doesn't take
21 the stand you won't hold it against him?

22 PROSPECTIVE JUROR 1: No.

23 MR. SCHECTER: You said you have some friends
24 or relatives who are police officers?

25 PROSPECTIVE JUROR 1: Yes, I have a friend of

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2 mine who is -- he's a state trooper.

3 MR. SCHECTER: Does he ever discuss with you
4 his work?

5 PROSPECTIVE JUROR 1: No.

6 MR. SCHECTER: That won't effect you one way
7 or the other?

8 PROSPECTIVE JUROR: No.

9 MR. SCHECTER: Besides the matter with your
10 sister, have you been the victim of a crime or
11 relatives, anyone else?

12 PROSPECTIVE JUROR 1: No.

13 MR. SCHECTER: Anything about what's been
14 said up to now give you any problems?

15 PROSPECTIVE JUROR 1: No.

16 MR. SCHECTER: Miss Kilgore, you said you
17 were the victim of a crime, what type of crime?

18 PROSPECTIVE JUROR 2: I guess it wasn't a
19 crime.

20 MR. SCHECTER: Okay. Anything that's been
21 said up to now, do you have any problems with any
22 of the concepts that's been said?

23 PROSPECTIVE JUROR 2: No, I do not.

24 MR. SCHECTER: Has anyone here ever testified
25 in Court? Miss Mejias, in that matter we

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discussed?

PROSPECTIVE JUROR 5: Yes.

MR. SCHECTER: Anyone here -- everyone watch will watch certain programs that have attorneys on them with the actors and actresses? But that's not realistic. Anyone watch Court T.V.? And that would be when they show the trials that would be more realistic. Anything about that that would make you feel uncomfortable about sitting on a jury.

PROSPECTIVE JUROR 5: No.

MR. SCHECTER: Mr. Ng, originally said you couldn't be fair and impartial?

PROSPECTIVE JUROR 4: Yes.

MR. SCHECTER: And then after a while you said you could. Now that you've thought about it anything about the type of crime we are dealing with make you feel uncomfortable about sitting on a jury?

PROSPECTIVE JUROR 4: No.

MR. SCHECTER: If the people -- if Mr. Zheng doesn't take the witness stand or doesn't call any witnesses would you hold that against him?

PROSPECTIVE JUROR 4: I don't think so, no.

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2 MR. SCHECTER: Based on whatever testimony
3 you hear or don't hear, do you have any
4 problem -- if you think the People's proof is
5 deficient, have a reasonable doubt, will you find
6 the defendant not guilty?

7 PROSPECTIVE JUROR: Repeat that?

8 MR. SCHECTER: You listen to the entire
9 testimony, the Judge charges you on the law. At
10 the end of the entire case you say you have a
11 reasonable doubt even though my client didn't
12 take the stand and we didn't call any witnesses,
13 would you have any problem standing up and saying
14 not guilty if you had a reasonable doubt?

15 PROSPECTIVE JUROR: No.

16 MR. SCHECTER: You said you were the victim
17 of a crime?

18 PROSPECTIVE JUROR 4: Yes.

19 MR. SCHECTER: What type of crime?

20 PROSPECTIVE JUROR: Burglary. Burglary.

21 MR. SCHECTER: You won't hold it against my
22 client, will you?

23 PROSPECTIVE JUROR 4: No.

24 MR. SCHECTER: Anyone ever arrested on that?

25 PROSPECTIVE JUROR 4: No.

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2 MR. SCHECTER: You said you have friends who
3 are police officers?

4 PROSPECTIVE JUROR 4: Uh-hum.

5 MR. SCHECTER: Do they ever discuss with you
6 their work?

7 PROSPECTIVE JUROR 4: No.

8 MR. SCHECTER: Miss Sullivan, I believe you
9 said to question number twelve, have you ever
10 been employed by a lawyer or law enforcement
11 agency and you said yes?

12 PROSPECTIVE JUROR 6: I worked for a lawyer
13 once.

14 MR. SCHECTER: Did he do criminal law?

15 PROSPECTIVE JUROR 6: No, mostly real estate.

16 MR. SCHECTER: That won't have any effect on
17 you?

18 PROSPECTIVE JUROR 6: No.

19 MR. SCHECTER: You also have friends,
20 relatives in law enforcement?

21 PROSPECTIVE JUROR 6: Yes. I have couple of
22 cousins that are police officers and I have a
23 cousin that's a probation officer.

24 MR. SCHECTER: Do they ever discuss their
25 work with you?

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2 PROSPECTIVE JUROR 6: No.

3 MR. SCHECTER: Would that have any effect on
4 your deliberations here?

5 PROSPECTIVE JUROR 6: No.

6 MR. SCHECTER: And you've been the victim of
7 a crime; what type of crime?

8 PROSPECTIVE JUROR 6: Not me. My son was
9 mugged, my grandmother was mugged.

10 MR. SCHECTER: Would that affect your
11 deliberations?

12 PROSPECTIVE JUROR 6: No.

13 MR. SCHECTER: Miss Kutney, anything what I
14 said up to now you have a problem with?

15 PROSPECTIVE JUROR 7: No.

16 MR. SCHECTER: Your -- I believe either one
17 or two sons or daughter --

18 PROSPECTIVE JUROR: My son.

19 MR. SCHECTER: Are probation officers?

20 PROSPECTIVE JUROR: My son and
21 daughter-in-law.

22 MR. SCHECTER: Do they discuss with you their
23 work?

24 PROSPECTIVE JUROR 7: Not really.

25 MR. SCHECTER: Anything about what they have